APPENDIX A

COURT OF CRIMINAL APPEALS OF TEXAS

AP-74,223

ROBERT BURNS SPRINGSTEEN, IV,
Appellant,

v.

THE STATE OF TEXAS.

May 24, 2006, Delivered

OPINION

The district court convicted the appellant of capital murder and sentenced him to death. A statute requires appeal to this court.[1]

The appellant questions the sufficiency of the evidence of his guilt; in Part I of this opinion, we hold that the evidence of guilt was legally sufficient. In Part II, we consider the appellant's complaints about the admission of hearsay evidence. In light of a significant decision about the constitutional standards for such evidence, which the Supreme Court of the United States delivered after the trial, we hold that the judgment must be reversed. In Part III, we consider some other issues that might recur in a retrial.

I.

Sufficiency of the Evidence

The appellant complains that the evidence was insufficient, both as a matter of law and as a matter of fact, to prove his

[1] *See* Code Crim. Proc. art. 37.071, § 2(h).

guilt beyond a reasonable doubt. He does not contest the sufficiency of the evidence to prove that, on or about December 6, 1991, Amy Ayers was intentionally killed with a firearm in the course of burglary and robbery. His arguments are that "there is no physical evidence supporting the State's theory that appellant and [three other suspects] committed these crimes," there is "DNA and fingerprint evidence suggesting other perpetrators," and his and another suspect's confessions "are facially inconsistent with the crime scene and each other."[2]

A. Legal sufficiency

If the evidence in a criminal prosecution was not sufficient, as a matter of law, to prove a defendant's guilt, the *Double Jeopardy and Due Process Clauses of the United States Constitution* do not permit the courts of a state to retry a criminal case after the reversal of a conviction on appeal.[3] Therefore, even when it has found reversible error in the trial, an appellate court must consider a complaint that the evidence was legally insufficient.[4]

In deciding whether evidence was legally sufficient to sustain a conviction, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.[5]

The essential elements in this case are set out in the charge of the court, which required the jury to decide whether the

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[2] Brief, at 77.

[3] *Greene v. Massey*, 437 U.S. 19, 24, 98 S. Ct. 2151, 57 L. Ed. 2d 15 (1977).

[4] *Rains v. State*, 604 S. W.2d 118, 120 (Tex. Cr. App. 1980).

[5] *Griffin v. State*, 614 S. W.2d 155, 159 (Tex. Cr. App. 1981) (conforming this court's minimum standard to the minimum standard of due process).

evidence proved beyond a reasonable doubt that, on or about December 6, 1991, the appellant intentionally caused the death of Amy Ayers by shooting her with a firearm or strangling her with a ligature, while in the course of committing or attempting to commit robbery or burglary. We find sufficient evidence in the appellant's confession and the physical evidence.

Firefighters found the bodies of four teenaged girls while they were extinguishing a fire in the back room of a frozen-yogurt shop in Austin around midnight on December 6, 1991.

Three bodies had been piled together in the center of the room, covered with inflammable materials, and set afire. Each of these three girls had been killed by one shot from a gun that was in contact with the back of her head. A bullet was recovered from the head of each of these bodies. One bullet was a .22-caliber, and the other two bullets were too deformed for their calibers to be determined.

Amy Ayers's body lay apart from the other three. She had been shot twice. One wound was made by a .22-caliber bullet that was recovered from the top of her head. This shot hit the top of the skull and knocked a small plug of bone down on top of the brain. The bullet stopped there, without going into the brain. In all probability, it did not cause her death. Another shot entered her head behind her left ear and went through the brain. This wound was instantaneously fatal. The bullet exited Ayers's right cheek. It was the only exit wound on any of the four girls.

The only bullet that was found at the scene was a .380-caliber bullet near Ayers's body. The only shell casing that was found was a .380-caliber in a floor drain. (A water-pipe had been broken or melted in the room where the bodies were found, and water stood more than an inch deep on the floor.) Investigators closely guarded the fact that a .380-caliber gun had been used, so that that information would not be reported to the public.

The jury heard evidence that a .22-caliber revolver was the only other gun used in the offense.

More than seven years later, the appellant told investigators that he was one of four suspects who took part in the burglary, robbery, and murders at the yogurt shop. His statement was tape-recorded. He said that he had used a .380-caliber, automatic pistol, and that another suspect had used a .22-caliber revolver. He admitted that he used the .380-caliber pistol to shoot a girl behind her left ear. He said that this shot did not kill the girl. He said that he raped the girl after he shot her. His description of the girl's position when he was assaulting her matched photographs of Ayers's body as investigators found it. The appellant said that, after he raped the girl, the suspect with the .22-caliber revolver shot her in the head. The appellant's description of the offenses matched the physical evidence in other aspects as well.

As to Ayers, the only material discrepancy between the appellant's statement and the physical evidence was that the appellant said that the shot that killed the girl was not from his gun, but rather from the other suspect's .22-caliber revolver. The jury, of course, could have believed the appellant's admission that he fired a .380-caliber bullet, and they could have found that that bullet went through Ayers's head and killed her. They could have disbelieved his statement that the other suspect's .22-caliber bullet killed Ayers, in light of the evidence that such a bullet did not penetrate her brain.

Although we shall refer to more evidence in deciding the appellant's other claims, we need not go further into the details here to hold that, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

B. Factual sufficiency

The question of the factual sufficiency of evidence of guilt is resolved by somewhat different standards,[6] and the appellate remedy is very different. If we sustained the appellant's complaint that the evidence was insufficient as a matter of fact, our judgment would be to remand the case to the trial court for retrial.[7] Since we shall render a judgment of remand because of error in the admission of evidence, we need not address the complaint that the evidence was factually insufficient.

II.

Admission of Co-defendant's Statement

In his first and second points of error, the appellant complains that the trial court erred in admitting excerpts from Michael Scott's written confession. The points, which correspond with the appellant's objections at trial, are based respectively on the *Confrontation Clause of the Sixth Amendment to the United States Constitution* and the rules of evidence for hearsay.

A. Rules of Evidence for Hearsay

A rule of evidence makes hearsay inadmissible "except as provided by statute or these rules" or certain other rules.[8]

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[6] *See Jones v. State*, 944 S. W.2d 642, 647-48 (Tex. Cr. App. 1996) (The factual sufficiency review process begins with the assumption that the evidence is legally sufficient. The court views, without the prism of "in the light most favorable to the prosecution," all of the evidence in the record related to appellants sufficiency challenge, not just the evidence which supports the verdict. The court reviews the evidence weighed by the jury which tends to prove the existence of the elemental fact in dispute, and compares it to the evidence which tends to disprove that fact. It sets aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust).

[7] *See Vodochodsky v. State*, 158 S.W.3d 502 (Tex. Cr. App. 2005).

[8] R. Evid. 801(d).

Another rule of evidence says that twenty-four kinds of hearsay statements are not excluded by the hearsay rule.[9] The twenty-fourth kind, which this case involves, is the statement against interest:

> A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable person in declarant's position would not have made the statement unless believing it to be true. In criminal cases, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.[10]

B. Confrontation Clause

The admission of hearsay against a criminal defendant, even if permitted by the law of evidence, also implicates the *Confrontation Clause of the Sixth Amendment.*[11] The clause reads, "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." It applies to criminal prosecutions in the courts of Texas.[12]

For about twenty-five years, the Supreme Court had held that the *Confrontation Clause* did not bar admission of an unavailable witness's statement against a criminal defendant

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[9] R. Evid. 803.

[10] R. Evid. 803(24).

[11] *Ohio v. Roberts*, 448 U.S. 56, 63, 100 S. Ct. 2531, 65 L. Ed. 2d 597 (1980); *Guidry v. State*, 9 S. W.3d 133, 149 (Tex. Cr. App. 1999).

[12] *See Pointer v. Texas*, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1967).

if the statement bore "adequate indicia of reliability."[13] To meet that test, evidence must either fall within a "firmly rooted hearsay exception" or bear "particularized guarantees of trustworthiness."[14]

In 2004 the Supreme Court departed markedly from its previous tests. It said:

> First, the principal evil at which the *Confrontation Clause* was directed was the civil-law mode of criminal procedure, and particularly its use of ex parte examinations as evidence against the accused. . . . The *Sixth Amendment* must be interpreted with this focus in mind.
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> . . . Leaving the regulation of out-of-court statements to the law of evidence would render the Confrontation Clause powerless to prevent even the most flagrant inquisitorial practices . . .

This focus also suggests that not all hearsay implicates the *Sixth Amendment's* core concerns. An off-hand, overheard remark might be unreliable evidence and thus a good candidate for exclusion under hearsay rules, but it bears little resemblance to the civil-law abuses the *Confrontation Clause* targeted. On the other hand, ex parte examinations might sometimes be admissible under modern hearsay rules, but the Framers certainly would not have condoned them.

The text of the *Confrontation Clause* reflects this focus. It applies to "witnesses" against the accused—in other words, those who "bear testimony." "Testimony," in turn, is typically "[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact." An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not. The constitutional text, like the history

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[13] *Roberts, supra* note 11, at 66 (quotation marks omitted).

[14] *Ibid.*

underlying the common-law right of confrontation, thus reflects an especially acute concern with a specific type of out-of-court statement.

Various formulations of this core class of "testimonial" statements exist . . . Regardless of the precise articulation, some statements qualify under any definition—for example, ex parte testimony at a preliminary hearing.

Statements taken by police officers in the course of interrogations are also testimonial under even a narrow standard.[15]

The Court reversed a state court's judgment of conviction for assault which rested in part on a hearsay statement that the defendant's wife, who did not testify because of a privilege, had given to police investigators.[16]

C. Michael Scott's Written Statement

1. Admissibility

In September 1999, Michael Scott met six times with police detectives and a Texas Ranger who were investigating the murders. The meetings included interviews at the detectives' office, an interview at Scott's home, interviews in automobiles, and trips to the scene of the crime and to places where Scott thought the detectives might find evidence. Scott made more than one tape-recorded statement in which he admitted taking part in the burglary, robbery, and murders at the frozen-yogurt shop. He also signed a written statement.

The statement may well have been admissible under the exception in *Rule of Evidence 803(24)* for hearsay statements that subject a person to criminal liability and the trustworthiness of which are clearly indicated by corroborating circumstances. That issue is moot because it is clear that, under the

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[15] *Crawford v. Washington*, 541 U.S. 36, 50-52, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004) (citations omitted).

[16] *See id.*, at 65-69.

analysis for the *Confrontation Clause* that the Supreme Court was to adopt in 2004, the trial court's ruling in 2001 was erroneous. Scott's statement was exactly the kind of testimonial statement that the Court held to be prohibited by the Clause: "Statements taken by police officers in the course of interrogations."[17]

2. Harm

The remaining question is the harmfulness of the error. If the appellate record in a criminal case reveals constitutional error that is subject to harmless-error review, the appellate court must reverse a judgment of conviction unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment.[18] *Confrontation Clause* violation is subjected to such a review.[19]

Of such determinations, the Supreme Court has said, in words that are as applicable to this case as they were to the one in which the Court wrote them, "Our judgment must be based on our own reading of the record and on what seems to us to have been the probable impact of the [co-defendants' statements that were admitted in violation of the Confrontation Clause] on the minds of an average jury."[20]

We have set out in Part I, above, some facts of the offense. Next we consider the erroneously admitted statement itself. The trial court "redacted" Scott's written statement in an effort to remove its references to the appellant and the other

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[17] *Id.*, at 52.

[18] R. App. P. 44.2(a) (adopting the standard of *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)).

[19] *Lilly v. Virginia*, 527 U.S. 116, 140, 119 S. Ct. 1887, 144 L. Ed. 2d 117 (1999); *Delaware v. Van Arsdall*, 475 U.S. 673, 686, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986).

[20] *Harrington v. California*, 395 U.S. 250, 254, 89 S. Ct. 1726, 23 L. Ed. 2d 284 (1969) (applying the standard of *Chapman*).

suspects. The court admitted the edited statement, which was read to the jury in this form:

> Voluntary statement. At 10:39 o'clock a.m. on the 14th day of September, 1999, and before making the following statement, I, Michael James Scott, while at the Austin Police Department, was warned by Detective Manuel Fuentes, to whom this statement is given, of my rights as follows. [Warnings and waiver omitted.]

My name is Michael James Scott. I am 25 years old. I was born on 2-6 of 1974. I am currently at the Austin Police Department homicide office at the Twin [*16] Towers giving this statement to Detective Manuel Fuentes and Texas Ranger Sal Abreo.

I am giving this statement about my involvement in the death of four girls at the yogurt shop on December 6, 1991.

I had previously given accounts of what happened in 1991 and afterwards to Detective Fuentes, Detective Ranger Sal Abreo, Detective Merrill, Detective Ron Lara and other detectives. Today I told Detective Fuentes and Texas Ranger Sal Abreo that now that I have confessed to my father and my best friend, Patrick Davidson, in my part in the the [sic] girls' death. I have been able to remember and want this statement to be correct and truthful. These things I will clear up in this statement, such as what I threw off the bridge after the murders. I had previously said that I threw a set of keys off the bridge; it was actually a cutting knife that I got from inside the yogurt shop.

And when I told you that I didn't really remember what happened to the second gun, the small semiautomatic pistol, I do remember that I gave it to my friend Patrick Davidson in December 1992 so that he could get rid of it. I did not want to pull him into this, and that is why I have been so hesitant to tell you what happened to the gun. If something happens to

him, he has nothing to fall back on. I will explain this more in detail later.

On December 6, 1991, I don't remember exactly what time it was. It was still daylight. Drove up to the strip mall where the I Can't Believe It's Yogurt shop was at. Go inside and took a look at the yogurt shop. Got up and made it look like going to the restroom. Walked out the back and walked around to the front of the building. Drove back to the mall. Left Northcross Mall. Drove through the alley behind the stores to see if the back double doors were slightly open. The building was on the driver's side, the left side of the car.

I brought the can of Zippo lighter fluid. It was the bigger metal can. Went into the back door. One of the girls said something like, "Hey, you, what are you doing? You don't belong in here." This girl was wearing a T-shirt. I believe that it had the name I Can't Believe It's Yogurt on it. Believe that she was working in the back room.

Expected to find only two girls inside store, and there were two other girls up front in the dining room area sitting down. I could see the commotion going on up front. I checked the door, and it was locked. There was one key in the lock. The door was locked. I looked outside to make sure no one was looking in.

As this went along, I got more and more scared. I looked out to check the front again. I heard the girls crying and one of the girls say that that's all there is. It's been dropped and you can't get to it. I went back there. I saw that all four girls were naked. I went to the pile of clothes and picked up some clothes to use to tie them up.

I remember a T-shirt and a bra used to tie them up. The girls were crying and whimpering. They were begging not to kill them. They said that they didn't want to die. I got a paper towel and put it inside one of the girl's mouth. [*Sic.*] I remember that my finger pushed through the towel when I

was trying to stuff it in her mouth. This may not have worked, so I might have had to use something else to stuff in her mouth. It was like terry cloth.

The girls were on their knees. I don't believe they were standing up, because I was looking down at them. I went to the back and saw one of the dark-haired girls on her hands and knees. I got on top of her. I tried to do her from the front. I looked at her face. I didn't want to look at her face. She had a piece of white terry cloth towel on her mouth. I looked away because I didn't want to see her. I couldn't get it up because I knew that what I was doing was wrong. I sort of faked it. The girl was sitting on the floor. I pointed the gun at her and tried to shoot at first but couldn't. I pointed the gun again at the girl and fired once into her head.

I don't remember seeing a safe, but I don't remember what she was doing down on the floor. I remember looking in the doorway, and the gun is still in my hand. I saw the side profile of the girl. She had like a white shirt on. I think I shot her in the head. I have been not wanting to remember this. I know I told you something different, but I did her too. I dropped the revolver.

I saw the girls laying [*sic*] there and I pulled one of the girls on top of the other. I gathered up napkins, cups, paper towels, and piled them on top of the three girls. I sprayed Zippo fluid on top of the girls. I emptied the can of lighter fluid. I had a Zippo lighter with me and lit the fire. I heard a whoosh sound of the accelerant when it caught fire. I don't remember what I did with the can. I could have threw [*sic*] it in the pile of stuff in the back of the store.

I remember that my only thought was to get out. I went outside. I had taken a knife from inside the shop. I believe I got it off the counter. It was a nice knife. I told you all before that I had taken a set of keys, but it was a knife. I remember now that it was a knife.

I remember driving but I don't remember what direction.

I got out and threw up over the railing of the bridge. I took the knife and I threw it over the rail also. I made sure it was gone. I remember trees, and I don't remember seeing any water. I got back into the car. I don't know what happened next. I remember being back at the apartment.

Detective Fuentes asked me to describe the two guns. A black .22-caliber revolver, small; I think it had wood grips. A small, semiautomatic pistol; it had a clip. I think it was a .38. Some of the writing on the gun was scratched off.

On the weekend I rode to San Antonio. I got a hold of a newspaper and I remember reading about the fire and the yogurt shop murders. I read it out loud. I remember getting back home and wanting to do nothing more than sleep.

The semiautomatic was lying on the bed. I knew that I had to get rid of it. I picked it up and left the apartment. I remember walking past a dumpster and thinking I should just throw it in the dumpster. I walked into the creek in the apartment complex. I put it in a hole in the side of a wall in the creek. I wedged another rock in it. I stacked some rocks near it as a marker to remind me where it put it. [*Sic.*]

In December of 1992 I was smoking a lot of pot. I had been drinking a lot too and started having flashbacks. I went back out to the creek and found the gun. I took the gun and put it in a brown paper back (*sic*) that I found in the creek. I took the gun back to south Austin to our apartment. I told Pat that I needed to get rid of what was in the sack. I didn't tell him. He told me that he put it out in the trash.

I can read, write and understand the English language in the above statement I have read, and it is true and correct to the best of my knowledge and belief. Signed, Michael J. Scott.

In determining the probable impact of this erroneously admitted statement on the minds of an average jury, we also must consider the importance of the witness's testimony, whether the testimony was cumulative, the presence or absence of corroboration, and the overall strength of the State's case.[21]

There was no physical or forensic evidence connecting the appellant to the crime. There was no witness that could tie the appellant to the crime. The question of the appellant's guilt hinged on whether the jury believed the appellant's videotaped confession, which the jurors saw and heard.

The appellant repudiated the confession. He testified that on the night of the murders, he went to a movie and met Scott afterward. He said that he confessed because he gave up on himself and thought that if he told the police what they wanted to hear, they still could not do anything to him because he was not involved in the murders.

In this case, a repudiation of a confession may have more than the usual weight. Police investigators had obtained other confessions to these murders that included non-public information, and the investigators had decided the confessions were not true. Within days of the murders, police were inundated with tips and leads. Many people knew facts that a witness called "the kind of information that should have remained at the crime scene." The appellant introduced several stories that the local newspaper published in December 1991 that contained "non-public" facts about the crime. An investigator testified that within weeks of the murders, "too many people [knew] too much about [the] crime scene." Many teenagers frequented the mall area near the yogurt shop, and information that the police had withheld quickly spread among "kids talking to each other about what they thought they knew about the case." Another investigator

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[21] *Van Arsdall, supra* note 19, 475 U.S., at 684.

testified that "perhaps as many as 60 teenagers in that first week or two after these murders were brought in for questioning." He and another investigator testified that the investigation was derailed when too many teenagers began providing too much confidential information. The investigators had to investigate the leakage of information from their own investigation. Several investigators were removed from the case, one after being investigated by the internal affairs division.

In February and March 2002, Alex Briones and Shawn Pearson Smith confessed to the murders. The appellant introduced these confessions, which contained non-public, "hold-back" facts. Despite the confessions, police investigators decided that neither Briones or Smith had committed the crime.

The State argued that, despite the appellant's repudiation of his statement about shooting Ayers, several details of his confession matched details Scott provided and therefore, Scott's statement corroborated the appellant's confession. The introduction of Scott's edited statement was therefore vital to the State's case; it was used to attack the veracity of the appellant's recantation and to inferentially connect the appellant to the crime. The State reminded the jury of the importance of Scott's statement in its closing argument when it referred to Scott's excerpts and its corroborating details a number of times.

Scott's statement also corroborated the State's explanation of the physical evidence. Although it was undisputed that there had been a fire at the scene of the crime, it was not clear whether an accelerant had been used to start the fire. Experts disagreed. The State's position in this trial was that an accelerant had been used, and it was supported by Scott's statement.

We cannot say, beyond a reasonable doubt, that the admission of Scott's statements did not affect the jury's determination of the appellant's guilt. We sustain the appellant's first point of error.

III. Other Issues

A. Admission of Co-defendant's Statement to Statham

The appellant's third and fourth points of error are that the trial court erred in admitting Amanda Statham's testimony that Scott admitted to her that he committed the offense. The appellant complains, as he did in his first two points, that the evidence was hearsay and that it violated his right to confront the witnesses against him.

Statham testified that several days after the murders she was talking with Scott at her house. She asked him why the police had questioned him about the murders, and he said, "I did it." Scott also told her some details of the murders.

Scott's statement was clearly a statement against his penal interest, which comes within an exception to the hearsay rule.[22] In addition, it was a spontaneous statement made to a friend during a casual conversation shortly after the commission of the crime, and it was said in a non-threatening, non-coercive atmosphere. Finally, Scott's later written statement, the appellant's statement, and the physical evidence independently corroborate Scott's confession of guilt to Statham.

The appellant argues that, because Statham testified that she was drinking vodka when Scott made his statement and that she did not believe him, the statement should not have been admitted. Statham's drinking might affect a jury's view of her credibility, and her opinion of the truth of Scott's statement (on the admissibility of which we express no opin-

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[22] *See* R. Evid. 803(24).

ion) might go a jury's decision on that issue, but they would not mean that the trial court abused its discretion in admitting the evidence.

With regard to the appellant's claim that the admission of the statement violated the Confrontation Clause, we conclude that the statement was nontestimonial under *Crawford.* In explaining the meaning of "testimonial statement," the Court in *Crawford* said, "An accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not."[23] Scott's statement to Statham was such a remark. We hold that the admission of the statement did not violate the *Confrontation Clause.* Points of error three and four are overruled.

B. Admission ofStatham's Statement to Her Mother

In his fifth and sixth points of error, the appellant asserts, "Because Stratham's testimony was inadmissible, third-party rehabilitation testimony [from Statham's mother] is likewise inadmissible."[24] Since we have overruled the appellant's points that Statham's testimony was inadmissible, we shall not sustain this argument which depends on those points. Points of error five and six are overruled.

C. Voluntariness of the Appellant's Statements

In his seventh and eighth points of error, the appellant complains that the trial court erred in admitting his statements to the police in violation of the *Due Process Clause of the United States Constitution* and the Due Course of Law provision of the Texas Constitution because his statements were involuntary.

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[23] 541 U.S., at 51.

[24] Brief, at 59.

On September 15, 1999, Austin Police Detective Robert Merrill and a local officer, who were dressed in plain clothes, drove an unmarked police car to the appellant's residence in Charleston, West Virginia. When the appellant answered the door, both officers identified themselves. Merrill told the appellant that he was following up on the investigation of the yogurt-shop murders and that he would like to speak with the appellant about the murders. The appellant agreed, called his wife, and voluntarily accompanied the officers to a local police station.

Throughout the day, Merrill told the appellant more than once that he was not under arrest and that he could return home at any time.

At the station, the appellant waited in the lobby for a few minutes while Merrill checked the interview room. Earlier in the day he had set up a video camera that was built into a wall clock and put a small audio recorder in the drawer of a desk in the room. Merrill then showed the appellant to the interview room and began the interview around 2:15 p.m.

Around 7:00 or 7:30 p.m., Merrill and the appellant agreed to put the appellant's statement in writing. Merrill then read the appellant the *Miranda*[25] warnings that were on a statement form. The appellant terminated the interview, saying that he wanted to go home and talk to his wife about everything before continuing. Merrill asked him if he also was invoking his right to an attorney, and the appellant said that he was. Merrill immediately stopped the interview, and officers took the appellant home.

Merrill testified that, although the subject of a lawyer came up several times during the interview, the appellant did not invoke his right to an attorney until the very end, of the

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[25] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L. Ed. 2d 694 (1966).

interview at which time Merrill immediately terminated the interview. Merrill also informed the appellant several times throughout the interview that he was not under arrest and that he was going home after the interview. Indeed, weeks passed between the interview and the appellant's arrest.

Because the appellant has not argued that the Texas Constitution should be interpreted differently from its federal counterpart, we shall treat them as providing the same protection and address the points together.[26]

The *Due Process Clause of the Fourteenth Amendment* requires that a confession must have been voluntarily made to be admissible.[27] Coercive police activity is a necessary predicate to the finding that a confession is not "voluntary."[28] In other words, a court must examine whether the defendant's will was overborne by the circumstances surrounding the giving of the confession; the court must take into consideration the totality of all the surrounding circumstances, including both the characteristics of the accused and the details of the interrogation; the determination requires a weighing of the circumstances of pressure against the power of resistance of the person confessing.[29] The *Fifth Amendment* requirements of *Miranda* apply only if the statement at issue was the result of the interrogation of a suspect who was in custody at the time.[30]

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[26] *See Heitman v. State*, 815 S. W.2d 681, 690-91 n.23 (Tex. Cr. App. 1991).

[27] *See Brown v. Mississippi*, 297 U.S. 278, 56 S. Ct. 461, 80 L. Ed. 682 (1936) (reversing a criminal conviction under the *Due Process Clause* because it was based on a confession obtained by physical coercion).

[28] *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S. Ct. 515, 93 L. Ed. 2d 473 (1986).

[29] *Dickerson v. United States*, 530 U.S. 428, 434, 120 S. Ct. 2326, 147 L. Ed. 2d 405 (2000).

[30] *See Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

The appellant argues that his police-initiated statement was not voluntary because (1) he was interrogated for several hours, (2) his attorney was not allowed access to him, (3) he was a high school dropout with a learning disability, (4) he was not advised of his *Miranda* rights, (5) he was interviewed in a police interrogation room with a hidden video camera, and (6) the police lied to him by suggesting that they had evidence that, in fact, did not exist.

The appellant was approached at his home by the police. At their request, he voluntarily accompanied them to the police station to discuss the murders. The uncontroverted evidence shows that the authorities never arrested the appellant or otherwise held him in custody during the time that he was at the station. In fact, the evidence shows that he could have left the building at any time. Because the appellant was never in custody, the police were not required to read him his *Miranda* rights. Further, no evidence was presented indicating that the police somehow tried to exploit the appellant's alleged learning disability to gain the statement.[31]

Although the interview was long, the appellant indicated that he had participated in lengthy sessions before, and the evidence showed that he was told on a number of occasions that he was not under arrest and that he could leave at any time. That his attorney was not allowed to see the appellant is also of no consequence in this determination. The appellant's father-in-law testified that he hired an attorney to represent the appellant after the appellant had accompanied the police to the station and had been talking to them for some time. Even if the protections of *Miranda* are triggered, the police have no duty under the *Fifth Amendment* to inform a suspect of an attorney's efforts to reach him.[32] The *Sixth Amendment*

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[31] *See Connelly*, 479 U.S., at 164-65.

[32] *Moran v. Burbine*, 475 U.S. 412, 425, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986).

right to counsel had not attached because the appellant had not been charged.[33]

Finally, the appellant implies that the use of hidden recording devices and false information about the evidence against him amounted to police coercion and undermined the voluntariness of the statement. Deception is only one factor to be considered in applying the general "totality of the circumstances" test.[34] Deception concerning what incriminating evidence authorities may have is not the type or character of coercion that would overbear the will of the defendant and bring about a confession not freely determined.[35] Finally, the appellant cites no law requiring officers to inform a suspect that their conversation with him is being recorded.

Given these circumstances, the appellant has failed to show that his statement was the product of any police coercion or that it was involuntary. Points of error seven and eight are overruled.

D. Admission of Other Testimony

In his ninth point of error, the appellant complains that the trial court erred in allowing James Ramsbottom to testify that he had seen the appellant in possession of a gun four to five years before the murders. He contends that this testimony was irrelevant, more prejudicial than probative, and amounted to improper extraneous-offense or character evidence.

During a hearing outside the presence of the jury, the appellant objected several times that Ramsbottom's testimony was about an act that was too remote to be relevant. The appellant also argued, "Any probative value [the testimony]

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[33] *See id.*, at 430-31.

[34] *See Frazier v. Cupp*, 394 U.S. 731, 89 S. Ct. 1420, 22 L. Ed. 2d 684 (1969).

[35] *Green v. State*, 934 S. W.2d 92, 99-100 (Tex. Cr. App. 1996).

might have is clearly outweighed by the prejudicial impact" of the evidence. In response, the State argued that the testimony was highly relevant and probative because it placed the appellant in possession of a "silver .380." The State noted that the ballistics evidence showed that Amy was killed with a .380-caliber weapon, and the appellant in his own confession stated that he used a "silver .380" in the commission of the instant offense. The appellant then briefly commented that he thought the testimony tended "to go more as a character trait," and the parties continued to argue the relevance of the evidence.

Outside the jury's presence, Ramsbottom testified that he knew the appellant in junior high school in West Virginia in 1986 and 1987. Ramsbottom told the court that on numerous occasions he saw the appellant in possession of a chrome- or nickel-plated .380 semiautomatic handgun with black grips. He also testified that the weapon was taken away from the appellant by another student during an altercation. After a review of a "substantial portion of the testimony in the case" and relevant case law, the judge ruled that the testimony would be allowed, without any reference to the place or the circumstances in which the witness saw the appellant with the gun, or to any other weapons that he may have seen. The judge noted that such details were more relevant to the immaterial fact of character than to the material fact that the appellant was seen in possession of a particularly described weapon that he was claiming never to have possessed. The judge further cautioned the State that its closing argument should be restricted likewise.

In his argument on appeal, the appellant again asserts that the testimony involves information that is too remote to be relevant, and that any probative value it may have was outweighed by the danger of unfair prejudice.

Under *Rule of Evidence 401*, evidence is relevant if it makes the existence of a fact that is of consequence to the

determination of the action more probable than it would be without the evidence. *Rule 402* makes all relevant evidence admissible unless a law provides otherwise. However, even when relevant, evidence may still be excluded by the trial court.

One such law is *Rule 403*, which authorizes exclusion of relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice (among other things). The admissibility of evidence is within the discretion of the trial court, and the court's decision will not be overturned if it was not an abuse of discretion. In other words, as long as the trial court's ruling was within the zone of reasonable disagreement, the appellate court should affirm.[36]

The State argued that the testimony at issue was relevant evidence of the appellant's possession of a weapon that was like the one that killed the victim, and that he confessed to using in killing the victim (although he recanted the confession). The judge could have concluded reasonably that the danger of unfair prejudice from the limited testimony about the gun did not substantially outweigh the probative value.

With regard to *Rule 404*, even assuming that defense counsel's mention of "character" at trial preserved this issue for review, the appellant's argument on appeal does no more than cite the language of the rule. Because he has failed to apply the extraneous-offense and character-propensity law to the facts in this case, he has failed to brief this portion of his point adequately, and we shall not address it.[37]

The court did not abuse its discretion in allowing the testimony. Point of error nine is overruled.

The appellant complains in his tenth and eleventh points of error that the trial court erred in allowing the testimony of

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[36] *Montgomery v. State*, 810 S. W.2d 372, 391 (Tex. Cr. App. 1991).

[37] *See* R. App. P. 38.1(h).

psychologist Dr. Jeffrey Harlow about his therapy sessions with the appellant. He contends that this testimony was irrelevant and prejudicial and violated his "confidential communications privilege." The appellant again cites *Rules of Evidence 401, 402, 403*, and *404*. However, his argument on the application of *Rules 401 through 403* consists of the conclusory statements, "This testimony is irrelevant, and any probative value is grossly outweighed by its prejudicial nature," and, "For the sake of brevity, appellant refers this Court to his arguments and authorities in Point of Error IX, *supra*." The appellant makes no argument or other reference to *Rule 404*. Because the appellant has failed to apply the law to the facts involved in these points of error, he has failed to adequately brief these aspects of his points, and we shall not address them.

The appellant's eleventh point of error is that Harlow's testimony violated his "confidential communications privilege." He recognizes that no such privilege exists in Texas for criminal proceedings. Nevertheless he contends that, because the communications occurred in West Virginia, the law of that state should govern.

In *Gonzalez v. State*, 45 S.W.3d 101, 103 (Tex. Cr. App. 2001), this Court recognized the general rule that when there is a conflict of laws concerning the admissibility of evidence, the law of the forum applies. There are three exceptions to this rule: privileged communications, parol evidence, and the statute of frauds. In the case of privileged communications, admissibility depends upon which state had the "most significant relationship" with the communication. The state where the communication took place is generally the state with the most significant relationship.[38]

Assuming that West Virginia law has the most significant relationship with the communication, the appellant still

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[38] *Id.*, at 106.

cannot prevail. When asked whether such a privilege existed in criminal trials in West Virginia, Harlow responded that no privilege existed if there was a court order signed by a judge. Harlow's understanding of the law corresponds with *West Virginia Code Section 27-3-1*, which states in pertinent part:

> Definition of confidential information; disclosure
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> (a) Communications and information obtained in the course of treatment or evaluation of any client or patient shall be deemed to be "confidential information" and shall include the fact that a person is or has been a client or patient, information transmitted by a patient or client or family thereof for purposes relating to diagnosis or treatment, information transmitted by persons participating in the accomplishment of the objectives of diagnosis or treatment, all diagnoses or opinions formed regarding a client's or patient's physical, mental or emotional condition; any advice, instructions or prescriptions issued in the course of diagnosis or treatment, and any record or characterization of the matters hereinbefore described. It does not include information which does not identify a client or patient, information from which a person acquainted with a client or patient would not recognize such client or patient, and uncoded information from which there is [*42] no possible means to identify a client or patient.
>
> (b) Confidential information may be disclosed:
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> * * *
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> (3) Pursuant to an order of any court based upon a finding that said information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section[.]

The trial judge found that the information sought in the trial was sufficiently relevant to the proceeding to outweigh maintaining the confidentiality of the communications about which the doctor would be questioned. The court then ordered Harlow to answer the parties' questions. Thus, the court complied with West Virginia law and did not err in admitting Harlow's testimony. Points of error ten and eleven are overruled.

The appellant complains in point of error twelve that the trial court erred in admitting the testimony of David Cancelada, M.D., who he claims testified beyond his realm of expertise. Specifically, the appellant complains that Cancelada was allowed to testify that photographs of the crime scene suggested direct-flame contact on the bodies.

Rule of Evidence 702 reads:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Under *Rule 702*, the trial court, before admitting expert testimony, must be satisfied that three conditions are met: (1) that the witness qualifies as an expert by reason of his knowledge, skill, experience, training, or education, (2) that the subject matter of the testimony is an appropriate one for expert testimony, and (3) that admitting the expert testimony will actually assist the factfinder in deciding the case.[39] We review a trial court's decision to admit or exclude expert testimony under an abuse-of-discretion standard. A ruling that is within the zone of reasonable disagreement will be upheld.[40]

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[39] *Alvarado v. State*, 912 S. W.2d 199, 215-16 (Tex. Cr. App. 1995).

[40] *Sexton v. State*, 93 S.W.3d 96, 99 (Tex. Cr. App. 2002).

Outside the jury's presence, the appellant objected that Cancelada was not qualified to offer opinions about whether the burns the victims received were contact or radiation burns. The State established that Cancelada was a general surgeon who had specialized in burns for the last three years. Cancelada testified that he was familiar with the various types of burns and their degrees. He also testified that he had seen over 700 burn patients in his specialized clinical experience. The court ruled that Cancelada was qualified, based on the information Cancelada had received in the case and his training and experience, to testify that the burns depicted in the photographs were consistent with burns that he had seen in his experience that were caused by direct flame, but that he could not testify that the burns depicted in the photographs definitely were one kind of burn or another. Thus, the judge sustained the appellant's objection in part and overruled it in part.

The trial court was within its discretion in admitting the limited portion of Cancelada's testimony, reasonably finding by a preponderance of the evidence that: (1) Cancelada, because of his training and experience, qualified as an expert on burn injuries, (2) burn injuries and any attendant damage is an appropriate area for expert testimony because lay persons are typically not versed in the area, and (3) Cancelada's specialized knowledge would assist the jury in appellant's case. The appellant's point of error twelve is overruled.

E. Constitutionality of Code of Criminal Procedure Article 37.071

In his fourteenth and fifteenth points of error, the appellant asserts that *Article 37.071* is unconstitutional as applied to him because it allows for the execution of a juvenile offender in violation of the Eighth Amendment to the *United States Constitution* and international law.

The appellant has failed to preserve these issues for our review because he did not raise them at trial. Therefore we may not consider them on appeal.[41] We have no doubt that on remand the district court will act in accordance with the decision that the Supreme Court made, after the trial of this case: "The *Eighth* and *Fourteenth Amendments* forbid the imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed."[42]

Conclusion

The judgment of the District Court is reversed, and the case is remanded to that court.

Delivered May 24, 2006

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[41] *See* R. App. P. 33.1(a): ("As a prerequisite to presenting a complaint for appellate review, the record must show that (1) the complaint was made to the trial court . . .").

[42] *Roper v. Simmons*, 543 U.S. 551, 578, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).

DISSENT:

Keller, P.J., *filed a dissenting opinion in which* Hervey *and* Keasler, JJ. *joined.*

The Court reverses appellant's conviction because of the admission into evidence of Michael Scott's written statement. I believe that a comprehensive examination of the testimony reveals that, beyond a reasonable doubt, the admission of Scott's written statement did not contribute to the jury's conclusion that appellant murdered Amy Ayers. With respect, I dissent.

Setting aside Scott's statement, the jury had for its consideration appellant's confession that he committed the crime with Scott, Maurice Pierce, and Forrest Welborn. By itself, a confession is a powerful piece of incriminating evidence. I start with the fact that in order to acquit appellant, the jury would have to disbelieve, or at least have a reasonable doubt about believing, appellant's own videotaped confession. The Court contends that appellant's repudiation of the confession at trial "may have more than the usual weight" because many so-called "nonpublic facts" were widely known and because two other people falsely confessed to the crime. I disagree.

It is first noteworthy that the September 14, 1999, interview in which appellant's confession was obtained was electronically recorded on videotape and by audio recording. As a result, the jury was not confronted with varying stories concerning what actually happened during the interview. Instead, the jurors could be confident that the State was correctly presenting what transpired, since the interview itself was available for review. Appellant was, incidentally, unaware that the interview was being taped.

An examination of that interview reveals that, while officers were firm in pressing for the truth and for details, no coercion was used, appellant was not threatened in any manner, and no promises were made. Although the officers

often expressed their disbelief regarding appellant's initially exculpatory answers and they misled appellant by overstating the strength of the evidence against him (e.g. whether the co-conspirators had implicated him and whether the movie appellant said he went to see was actually playing that night), these tactics played upon appellant's guilty mind and were not the kind of tactics that would an inspire an innocent person to confess falsely.[1]

The fact is, the defense offered no remotely believable motive for appellant to confess falsely to involvement in the murders. Appellant claimed that he did so because he "just kind of gave up on [him]self" and believed that the "physical proof" would exonerate him anyway. I can see how "giving up" might conceivably contribute to a decision to confess induced by, say, threats. But I do not understand the logic of "giving up" being a stand-alone reason to confess. Regardless, if appellant truly believed the physical evidence would exonerate him, there was no reason to confess. He could have simply walked out.[2] At trial, appellant claimed that he felt that he was not free to leave because he requested a lawyer near the beginning of the interview and that request was "totally ignored," but the recorded interview shows otherwise.

When the interview began to become accusatorial, appellant said, "If I'm being accused of something, then I would

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[1] "Of the numerous types of police deception, a misrepresentation relating to an accused's connection to the crime is the least likely to render a confession involuntary. The police conduct complained of here, concerning the strength of the prosecution's case against appellant, falls into this category." *Green v. State*, 934 S. W.2d 92, 100 (Tex. Crim. App. 1996) (citation omitted), *cert. denied*, 520 U.S. 1200, 117 S. Ct. 1561, 137 L. Ed. 2d 707 (1997).

[2] *See Dowthitt v. State*, 931 S. W.2d 244, 255 (Tex. Crim. App. 1996), *cert. denied*, 526 U.S. 1070, 119 S. Ct. 1466, 143 L. Ed. 2d 550 (1999) ("Stationhouse questioning does not, in and of itself, constitute custody.").

like a lawyer present," and he stated that he had been questioned over and over, and "would like this to come to an end . . . one way or the other." One of the officers responded that they would also like the matter to come to an end and asked, "Are you telling us that you want a lawyer and you want to leave?" Appellant then asked if there were any charges against him, and the officer informed him that he was not under arrest and was free to leave any time he wanted to. Appellant responded that he wanted "to do this the right proper way" but did not ask to leave or request an attorney, and the questioning continued. So, contrary to appellant's trial testimony, his inquiry about an attorney was not "totally ignored." In fact, later in the interview, appellant volunteered that the officers "seem like real nice knock out guys and have been real friendly and kind" - hardly a description of officers running roughshod over his rights. And the officers did nothing to contradict their statement that appellant was free to go. There is no indication that they deprived him of food or denied him breaks, nor is there any indication that he was denied the ability to contact friends or relatives, or even an attorney, if he so desired.[3]

But even if appellant really believed that he was not free to leave, the issue of harm hangs on whether the jury would have believed the unlikely claim that appellant would implicate himself in a capital murder for the purpose of shortening a temporary period of detention. There was simply no reason for the jury to conclude that the confession was anything other than a voluntary and truthful statement.

The Court suggests that the existence of other, false, confessions (specifically that of Alex Briones and Shawn

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[3] *See id.* at 256-257 (custody occurred as after development of probable cause, where the length of questioning was extraordinary, the defendant was accompanied on restroom breaks, and police ignored repeated requests to see wife).

Smith) somehow makes appellant's confession less believable. In an infamous case such as the "Yogurt Shop Murders," law enforcement may deal with mentally imbalanced individuals who confess simply as a way of thrusting themselves into the limelight. But limelight-seekers tend to inject themselves into a case during the height of publicity, not years later when the trail has grown cold. Briones and Smith[4] gave their inculpatory statements in February and March of 1992, within just a few months of the murders, which occurred in December of 1991. Appellant, by contrast, denied involvement in the crime when he was interviewed in December of 1991, and he continued to deny involvement through much of the interview conducted in 1999. At any rate, appellant never claimed such a motive in his trial testimony.

There are other reasons, from a motive standpoint, to distinguish appellant's confession from that of Briones. Briones had been arrested for a San Antonio murder, in which he had raped a woman and set her on fire. When Austin Police Sergeant Hector Polanco interviewed Briones regarding the yogurt shop case, it was evident that Briones was going to be convicted of the San Antonio murder. Briones expressed his desire to be executed because he did not want to "rot" in prison. Briones was also aware of a $ 100,000 reward for information leading to the capture of the participants in the yogurt shop murders. During the interview, he talked quite a bit about the reward money and asked whether his family would get the reward because they had assisted law enforcement in locating him. Polanco told him that was a decision to be made by Crime Stoppers "but yeah, if it led to the arrest and convictions."

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[4] Smith's statement was not particularly inculpatory. He claimed that he just tagged along with three other individuals to watch one of them scare a girl who caused that person to lose money in a marijuana deal. Smith said that he tied up one of the girls in the yogurt shop but was completely surprised when the other participants stripped the girls naked, engaged in sexual assaults, and murdered the victims.

Moreover, appellant's confession contained a crucial piece of information known only to the perpetrators and to law enforcement: that a silver .380 automatic was one of the murder weapons. The Court makes much of the fact that many nonpublic ("hold-back") facts were actually widely known. But Sergeant Bruce Boardman testified that "there were two or three things that were still held close to the vest, so to speak, that would turn the case if the individual came up with the right answers." Boardman explained that certain detailed information, such as the specific cause of death or the number of gunshot wounds, were more easily kept secret because they were not the type of facts that could be ascertained from a casual observation of the crime scene. It was determined that Amy Ayers was killed by a .380 caliber bullet, which was collected from the scene.[5] A ballistics analysis of the grooves found on that bullet linked it to one of several .380 automatic models, most likely an AMT .380 Backup. The ballistics expert testified that all the guns of that model that he had seen up to the time of the crime were a silver-gray in color, although the color of the handgrips varied. Whether the gun was silver was not considered to be a hold-back fact because the gun would either be silver or black, so someone would have a fifty-fifty chance of choosing the correct color. But testimony from two different police witnesses, Detective Robert Merrill and Sergeant John Jones, confirmed that the identity of the gun as a .380 was a closely guarded fact that was never revealed to anyone outside of law enforcement.

No evidence at trial suggests that this information was ever leaked. And neither Briones nor Smith told police that a .380 was used in the offense. Briones characterized the two weapons used as a black .22 automatic[6] and a chrome .38

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[5] A shell casing for the bullet was retrieved in a later search.

[6] The absence of shell casings for the .22 led the police to believe that it was not an automatic, but a revolver.

automatic. Despite the orthographic similarity between .38 and .380, they are not the same type of gun. Moreover, Briones characterized the .38 as "pretty big" but both Detective Merrill and appellant characterized the .380 automatic as a small gun.[7] Smith described the two weapons as a silver revolver, smaller than a .357, and a black automatic of some sort. He gave no caliber ratings for the guns because he claimed that he was unfamiliar with calibers.

But in his confession, appellant characterized the gun he used as a silver .380 automatic, a piece of information that, in the absence of a really good exculpatory explanation, ties him to the crime. In attempting at trial to explain his remarkable knowledge of this information, appellant gave inconsistent and unbelievable stories. When asked during direct examination what basis he had for telling the police that the gun was a .380, appellant first replied, "I don't know." He then suggested that he thought of a .380 because a former coworker possessed a silver .380 for his own protection. When pressed further by his own attorney, appellant said that Detective Merrill had told him during questioning that a large caliber weapon had been used in addition to the .22, that

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[7] There was testimony that Briones appeared to lack information on many other facts relating to the crime. Sergeant Mike Huckabay testified that he was asked to take over the interview being conducted by Polanco. Polanco objected, but was overruled. When Huckabay began by asking Briones to tell him about the four girls, Briones expressed surprise, because he thought there were only three. After more questioning, it became obvious to Huckabay that Briones "had a lot of the facts wrong." Huckabay then walked outside and told Polanco, "Hector, this guy don't know jack." Polanco replied, "Let me talk to him some more," and went back into the interview room. Later, he came out and told Huckabay that Briones was ready, and at that point Briones gave a written statement. After an internal affairs investigation, Polanco was taken off the case. That investigation elicited statements from Briones that Polanco had threatened him and told him what to say. There is nothing in the record to indicate that Polanco ever interviewed appellant.

appellant considered a large caliber to be a .45, a .40, or a 9 millimeter, and that appellant said the gun was a .380 because he figured that a small caliber such as a .380, a .3 8, or a .25 would not match the facts of crime. Contrary to appellant's claim, however, the recording of the interview reveals that Detective Merrill never made any suggestion regarding the nature of the weapon that killed Amy Ayers. And appellant did not suggest that the gun was a .38 or a .25; he said it was a .380. When pressed on the matter during cross-examination, appellant changed his story, replying that it was "also very possible that during my questioning, either here in Austin or over the phone, that that was brought up previously." Appellant later agreed that his mention of the .380 was a "guess."

Strikingly, appellant did not claim that he guessed ".380" because he had previously owned one. In fact, during his trial testimony, appellant denied that he had ever owned a .380. But James Ramsbottom, a junior high school acquaintance of appellant's in West Virginia, testified that he saw appellant in possession of a nickel-plated or chrome-plated .380 firearm with black handgrips.

Appellant's equivocation regarding the .380 extended also to the question of whether he owned any firearms at all.

In the early part of his 1999 recorded interview, appellant claimed, "I've never owned a gun." Later, in a *gratuitous* explanation for why he was shocked by Pierce's conduct during the incident, appellant stated, "I like guns, I like *collecting* guns, it's—it's not a toy, in my opinion."[8] In the course of a single interrogation, appellant went from never owning a gun to being a gun collector. Although appellant denied at trial that he had ever owned a .380, he conceded that he had owned guns. When asked at trial about the contradiction in the recorded interview, appellant attempted to harmonize his earlier statements by saying, "Family members

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[8] Emphasis added.

in my family collect guns that I have access to, but I do not collect guns myself." Of course, appellant denied that any member of his family had access to a .380.

Both the recorded interview and appellant's trial testimony reveal his attempt to distance himself in any way possible from what he knows is the murder weapon. He has never owned guns, but he collects them. He does not collect guns, but his family collects them and he has access to them. He does not know why he said .380 but maybe it is because a he saw a .380 owned by a co-worker. Or perhaps it is because he knows the .380 is a small caliber and the detective said in the interview that a large caliber was used in the crime, so the .380 could not have been one of the murder weapons. But the detective did not say a large caliber was used in the crime, so perhaps appellant was told in a previous conversation that a .380 was one of the murder weapons. But in any event, appellant never owned a .380, despite the fact that a junior high acquaintance saw him with one. And his family never owned a .380 either. The mounting contradictions make appellant's position more and more implausible. The Court's harm analysis does not account for the probable effect that the contradictions would have had on the jury's determination of whether appellant's confession was true.

In addition, appellant's defense was torpedoed by the State's complete dismantling of his alibi. The murders were believed to have occurred shortly after the shop closed at 11:00 p.m. A police officer looking for drunk drivers noticed smoke coming out of the yogurt shop and reported the fire at 11:47 p.m.

At trial, appellant testified that he was at Northcross Mall during the relevant period of time. Specifically, he claimed that he and Scott arrived at the mall between 10:20 and 10:30 p.m., when Pierce and Welborn went to pick up Pierce's sister from work. He claimed that he remained at the mall and sneaked into the movie theater there at midnight to watch the

Rocky Horror Picture Show. He said that Scott attempted to sneak in also but was apparently caught and waited outside for appellant until the movie was over. He claimed further that Pierce and Welborn were supposed to pick them up when the movie ended around 1:30 or 2:00 a.m., but never showed up. Appellant testified that "an older gentleman" named "Bob or Robert," who had attended the movie, gave him and Scott a ride, dropping them off near Scott's mother's house, where appellant and Scott spent the night.

First, no one confirmed appellant's story at trial. Perhaps it is too much to expect that Scott, Welborn, or Pierce, who were also accused of this crime, would testify on appellant's behalf, but the fact remains that they did not. Thomas Powe (whom appellant characterized early in the recorded interview as his "best friend" while he lived in Austin) also could not confirm appellant's story. Powe had heard earlier in the day that appellant was going to be at the mall, so he looked for him before entering the movie theater but did not see him. (Under cross-examination, Powe conceded it was possible that appellant could have attended the movie without being seen by him.) Appellant also failed to secure the testimony of "Bob," who supposedly gave him and Scott a ride to Scott's mother's house.

Second, appellant's alibi was fully refuted by Chandra Morgan, who, at the time of the murders, was a junior high student who knew Pierce and Welborn. Morgan testified that on the evening of the murders she met Pierce, Welborn, and two other boys, and consumed "acid" with them. In court, she identified appellant as one of the other boys. After consuming acid, they got into a car driven by Pierce and went to the yogurt shop. Welborn stayed outside while the others, including Morgan, entered the shop. While there, Morgan drank some water, and the boys went to the restroom. Afterwards, they returned to the mall, and Morgan went to the arcade. Morgan lost contact with the boys for 30 to 45

minutes, after which they drove up and asked her if she wanted a ride. As they were driving away, she heard fire engine sirens. She told the boys that she wanted to see where the fire engines were going, but they continued to drive away from the area until they reached Gullet Elementary School. Morgan noticed that appellant was carrying a gun in his waistband. The gun appeared to be a semi-automatic.

Morgan's testimony contradicted appellant's alibi by placing him in the company of Pierce and Welborn at the time of the fire when—according to him—he was at the mall getting ready to sneak into a movie. Her testimony also contradicted appellant's story about Pierce and Welborn not showing up after the movie was over, requiring him to hitch a ride with another moviegoer. And, importantly, her testimony showed that appellant had a semi-automatic handgun that night, a fact that is too remarkable to be a coincidence.

Appellant's alibi was also seriously undermined by Scott's admission of guilt. Although Scott's written confession to law enforcement officials may have been inadmissible, the Court has acknowledged that Scott's confession of guilt to Amanda Statham was properly admitted as a statement against interest. The statement to Statham does not contain the amount of detail found in the written confession, but the bare admission of guilt made by Scott is itself inconsistent with appellant's story at trial. While appellant's alibi would separate him from Scott for an hour-and-a-half to two hours during the movie, the murders were not committed during that time. The movie started at midnight, and the yogurt shop was already burning at 11:47 p.m. And in fact, appellant testified at trial that it was "100 percent correct" that Scott could not have participated in the murders because he was with appellant at the time. So, if Scott *did* participate in the murders, appellant's alibi cannot be true.[9]

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[9] There were a few other troubling facts surrounding the incident.

Also, appellant's accomplices had no alibis. Only appellant testified that Scott was somewhere besides the yogurt shop at the time the murders occurred, and no one provided any sort of alibi for Welborn and Pierce. By contrast, the person Briones alleged was his co-conspirator had a rock-solid alibi: he was in prison at the time. And the three other people alleged by Smith to be involved all testified at trial that they were not involved in the murders.

Finally, appellant's confession was consistent with the physical evidence at the crime scene, with Morgan's testimony, and with Scott's admission of guilt to Statham. In other words, the evidence not only contradicted appellant's exculpatory trial testimony; it supported his videotaped confession of guilt.

In summary, appellant confessed. That confession was voluntary. Appellant had no motive to confess falsely, and there was absolutely no reason for the jury to doubt the truthfulness of the confession. Appellant knew that a .380 semi-automatic handgun was used in the murders, and this information was a closely guarded secret known only to law enforcement and the perpetrators. His various explanations for how he knew [*65] that a .380 was used were inconsistent and unbelievable, and he even contradicted himself on the question of whether he had ever owned guns at all. Appellant had previously been seen in possession of a .380 semi-automatic handgun, and on the very day of the murders he was seen in possession of a semi-automatic handgun. Appellant's alibi testimony was unsupported by other testimony

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Appellant's father called the police during the day on December 6, 1991 to tell them appellant and Scott (who were roommates) had been missing since December 4th. In a December 15, 1991 interview with law enforcement, appellant told the police that he and Pierce had picked up Kelly Hannah (appellant's girlfriend) sometime during the evening on December 6th. But Hannah testified that appellant and Pierce were supposed to show up that night but did not.

or physical evidence of any kind. It was contradicted by his own videotaped confession, by Chandra Morgan's testimony, and by Scott's admission to the murders. Not only are Morgan's testimony and Scott's confession inconsistent with appellant's alibi, they are consistent with details of appellant's videotaped confession. The two "alternate suspects" who confessed to involvement in the crime—Briones and Smith—were unaware that a .380 handgun was used, and they implicated "accomplices" who clearly were not involved. Any error in admitting Scott's written confession was harmless beyond a reasonable doubt.

I respectfully dissent.

Keller, P.J.

Do not publish

Date filed: May 24, 2006

APPENDIX B

COURT OF CRIMINAL APPEALS OF TEXAS

AP-74,223

ROBERT SPRINGSTEEN, IV

September 27, 2006, Decided

OPINION

State's Motion for Rehearing Denied.

APPENDIX C

Court Reporter's Record
Volume 63 State's Exhibit 4

TRIAL COURT CAUSE NO. 99-6015
STATE OF TEXAS VS. ROBERT SPRINGSTEEN IV

Michael Scott Transcript
September 9, 1999
Tape #1

Page 81

Scott: Can I take a break, guys? Can I go outside and smoke a cigarette?

Page 102

Scott: Um . . . gentlemen, is there anything that I can read to refresh my memory on that night it happened?

Lara: . . . I have some notes. And I'll just give you the little old ins and outs here. This will help refresh your memory.

Lara: . . . on 2/19 of '98. And this was about 10:21 in the morning. And he asked you about the murders, and you said that you remembered the night of the murders and that you went to the mall about 5:00 or 6:00pm. You said that you didn't remember if you walked there or if you went with Maurice. And you also said that you were hanging out mostly with Robert Springsteen and Maurice. And— but

Page 103

Lara: Maurice would go off and do his own thing some-times and then come back. And then you said to him, sometime after dark, you were

outside the mall smoking a cigarette, and it was after dark.

Lara: And that you were on the side of the mall where you could see the Yogurt Shop. And then you said that you saw a jeep drive out of the Yogurt Shop Parking lot. It turned left and drives away with no lights. You then went back inside the mall and you hung out with some more friends. You didn't remember what time you left the mall, but you said that they, including yourself, saw all the commotion going on over at the Yogurt Shop. And they left the mall in a different direction. Now how in the world could you have said that if you were asleep at 10:30, or dropped off at 10:30 at Springsteen's condo? That's not a little inconsistency—

Scott: That's a lie—a huge inconsistency.

Lara: And then you said Robert may have been with them. And if he was with them, he may have been in the front seat. And Michael, of course, may have been in the back seat. There's no mention of this unidentified blonde male individual, 5'6", 5'7", wavy hair, stocky build. That's bullshit. And you know it is. Then you go on to say that you went—after the mall you all went driving around and you drank some beer. And then you got home, not at 10:30, but you're saying you told him you got home at 2:00 in the morning. And then you remembered going into the woods and shooting Maurice's gun, but you didn't remember exactly what night that was. Then you remembered talking to some big fat Mexican guy.

Page 104

Scott: Yeah, and he drank a big thing of ketchup.

Page 107

Scott: I saw the fire trucks and what not. I lied to the officer about seeing . . . seeing the vehicle.

Hardesty: How come you did that?

Scott: I don't know.

Hardesty: Michael, you lied to him about the jeep, because you're scared of something, because you had some knowledge, and you wanted to throw him off. If you're just volunteering information, and you're not involved in this thing in any way, you don't make something like that up—

Hardesty: Michael, Let's put this fucking thing to bed today.

Scott: I would really like to.

Page 127

Stevenson: Okay. Do you know for sure who shot any of those girls in that Yogurt Shop?

Scott: No, sir.

Stevenson: At the very moment those girls were shot, were you present?

Scott: No, sir.

Stevenson: Did you participate in any way in those murders at the Yogurt Shop?

Scott: No, sir.

Stevenson: And participate means know about it and then lie about it. That hadn't happened?

Scott: As far as I know, it hasn't.

Stevenson: Well, Mike, you would know that.

Page 128

Scott: The only thing I remember is, I remember—was Maurice driving the vehicle and we were driving to her house.

Scott: I remember Maurice saying that he knew who did it, but he did not tell me who did it. And he did not admit to doing it to me.

Stevenson: When did he tell you this?

Scott: I think when he—when the paper was read.

Page 129

Scott: I vaguely—the detectives brought it to light that a paper was bought. I vaguely remember the paper being read, and Maurice saying something about it.

Stevenson: Who read the newspaper?

Scott: I don't remember.

Page 130

Scott: Maurice was present. I was present. Robert was present. I think Forrest was present.

Lara: Who did he say did it?

Scott: I don't remember what was said.

Page 156

Lara: Okay. So you all—are you all circling around? Looking at it? Are you casing?

Page 157

Scott: Yes. Maurice and Robert are casing the joint. I'm along for the ride, guys.

Scott: I think Robert and Maurice had gone in earlier to buy a yogurt.

Hardesty: Were you with them?

Scott: I think I was.

Scott: Earlier in the day. Or just—I remember being in there, guys.

Page 158

Scott: I remember eating and buying a yogurt.

Scott: I think—no. I went in there and I bought a yogurt.

Hardesty: Okay.

Scott: A multi-flavored yogurt.

Scott: I think Robert got something. But Maurice didn't.

Lara: Do you remember who was working there? Which one of these girls was there?

Scott: Eliza may have been.

Scott: I think I was served by Eliza.

Hardesty: Okay. Let's jump forward a little bit. Think real hard, at what point did they decide it was the Yogurt Shop they were going to get the money from? When was that?

Page 159

Scott: I don't know. They – I think they just looked at each other and said, "That one."

Lara: While you were cruising around?

Scott: Yeah.

Scott: I don't know. They had, they had the . . . . it had the fewest people in it. Oh—it had a door open. The back door was open.

Hardesty: The back door was open?

Scott: The back door was propped open.

Hardesty: How was it propped open? What was it propped open with?

Scott: I don't remember. I remember it being propped open.

Page 162

Lara: What does Maurice Pierce tell you to do?

Page 163

Scott: "Stay here and keep an eye out. Watch the car. Keep the car running."

Lara: Who else was in the car with you at that point?

Scott: Forrest and I is all I can honestly remember.

Lara: When Maurice and Rob Springsteen went inside the business, did they close the door behind them?

Scott: I don't remember.

Scott: . . . a very short while later they came back out.

Scott: 10, 15 minutes.

Hardesty: Did you hear anything when they were in there?

Page 164

Hardesty: . . . you're ten feet away . . . Don't hold back.

Scott: I'm not holding back guys. You all made a bunch of memories trigger. I don't remember hearing a loud bang. I don't remember hearing a gun go off. I would remember that.

Scott: I remember them going in, staying in a short while, coming back out—I'm looking around to

make sure there's nobody around. I move—I don't remember driving. He wouldn't let me drive his vehicle. It was his Daddy's vehicle.

Scott: They run back out, got in, "We got what we needed, let's get out of here."

Scott: I asked, "You didn't just rob that place, did you?" I think he said, "Yes, he did."

Page 167

Scott: I guess at the time I was threatened and I was scared.

[Break]

Lara: I got you another drink. Can I get you anything else?

Scott: A phone

Lara: Okay, got you covered....who you need to call?

Scott: My wife.

Page 168

Lara: You know the number.

Scott: Hey, baby, I don't know how much longer I'm going to be here. Evidently I've got more information about this this than I thought I did. I love you. I'll talk to you in a while, bye.

Scott: I have a question.

Lara: Okay.

Page 169

Scott: What's going to happen to me?

Lara: Well, after we're done, we're going to take you home.

Page 181

Scott: I think I was the only other person in the vehicle.

Hardesty: Michael, was another gun talked about? Was there a second gun talked about?

Scott: I think there was a second gun talked about, but I don't know what it is. I don't know who had it and I don't know where it was.

Scott: I think Maurice asked. . . . I think Maurice asked Robert if he was packing one.

Scott: He said, "Yes."

Page 182

Scott: I think I saw it stuck, stuffed into his waistband.

Hardesty: Do you know what a revolver handle looks like?

Scott: Yes.

Page 183

Hardesty: Do you know what an automatic handle—

Scott: Yes sir.

Hardesty: One's rectangular and flat, and the other one is curved.

Scott: It was an automatic handle.

Page 186

Scott: We went into the shop earlier. I remember getting a yogurt.

Page 187

Scott: I was there to buy yogurt.

Lara: The other guys were there to do what?

Scott: I think they were there to case the place.

Court Reporter's Record
Volume 64 State's Exhibit 6

Michael Scott Transcript
9-9-99
Tape #2

Page 3

Scott: I think we parked in the alley. Or we pulled right up front.

Hardesty: Oh, Michael. Michael, you know which one it is. Which one is it?

Scott: I think we parked in the alley. Because I remember looking at the door.

Hardesty: It was propped open?

Scott: No—it wasn't open all the way. It was just—

Page 4

Scott: It didn't close all the way.

Hardesty: How open was it?

Scott: Not real far.

Hardesty: Michael, who went inside that business? Who went inside there?

Scott: Robert and Maurice.

Scott: I think they were going in to rob the place.

Hardesty: Michael, do you see what you're doing? You're still minimizing your involvement in this thing. Why are you doing that? It's just going to fuck you.

Scott: Yes sir.

Page 5

Scott: We parked out behind. They went inside. They did what they needed to do. We came back and drove off.

Hardesty: We came back. You said, "We came back."

Scott: I didn't go inside.

Page 7

Scott: We parked behind the place.

Hardesty: Was the door open?

Scott: Not all the way.

Scott: I'll show you. The door was caught like this.

Hardesty: Do you remember that? Or are you just saying that? Do remember that it was open like that?

Scott: I remember it was open like that.

Page 29

Scott: He said, "Go over to the mall parking lot. Drive around on the other side."

Scott: Go to—drive into Northcross. And I did. I got to there and then I went and changed—I went and got back in the back seat. And I asked, "Did you actually rob that place?" And they said—I think Robert said, "Yes, we did." It was either Maurice or Robert. I don't know.

Hardesty: So you're remembering some more stuff now, Michael, than you did before?

Scott: A little bit.

Hardesty: Michael, Let me tell you something. I think those doors. . . I think those doors are real significant back in the alley. Okay? And you can't get

through those doors—those doors are like symbolic. You can't get through those doors. Do you know what I'm saying?

Scott: Yeah.

Page 32

Scott: I don't remember.

Hardesty: Michael, look at me. We need to do this today. You do remember. Forrest was with you all and he waited out in the car. Because he's the dipshit.

Scott: Yeah.

Hardesty: Right. And you said, "We ran back to the car." You said that several times earlier. Well, "we" is right.

Scott: I'm not trying to play a game with you all.

Scott: Look, can I tell you all what I keep seeing in my head?

Hardesty: Tell us what you keep seeing in your head.

Scott: I keep seeing these girls get shot.

Hardesty: Right. Tell us what that looks like. Tell us what you see, specifically.

Scott: I remember seeing girls—I remember seeing them down—I remember one girl screaming terrified.

Page 33

Scott: I remember hearing a girl scream and run off. I remember Robert—

Scott: She runs towards the front of the ~~door.~~

Scott: Robert went over there and grabbed her.

Hardesty: Okay. What happened then?

Scott: I remember them getting the girls down on their knees.

Page 34

Hardesty: All right. Rob grabbed one of the girls. She was running towards the front of the store. What did he do with that girl?

Scott: Um...he spun her around. We got—we moved to where you couldn't see out the doors. Out the glass out front.

Hardesty: You're remembering what happened.

Scott: I don't honestly remember going in the building.

Page 35

Scott: Urn . . . Maurice goes to the register. After—they got them behind the counter.

Hardesty: What did they do when they got them behind the counter?

Scott: They got them down on their knees. I think they were laying down?

Scott: I think it was Maurice who went to the register and opened it up.

Scott: And him asking where the rest of the money was.

Scott: One of the girls said, "There isn't any more. They've already made their drop." And I remember Maurice getting pissed off, losing his temper.

Scott: And screaming, "Where's the money?" She said she doesn't know. I guess he pulled the trigger.

Page 36

Scott: He looked at the next girl, "Where's the money?" She said the same thing. And um . . . he pulled the trigger.

Scott: Um . . . I seen the first two girls get it.

Scott: I think they were still on the floor.

Scott: Kneeling on the floor.

Page 37

Scott: I remember standing at the back of the store—

Scott: All I remember is standing inside and seeing the first two girls get shot.

Page 45

Scott: "The money's not here." It's . . . it's—"The money's not here."

Hardesty: And what did Maurice say?

Scott: "There has to be more than that. The business day is over."

Hardesty: And what did she say?

Scott: "We've already . . . um . . . we've already made the drop."

Scott: He asked her again. And I think he shot her.

Page 46

Hardesty: Was she crying?

Scott: Yeah. She was crying.

Lara: Was she tied up?

Scott: Yes.

Scott: I . . . I remember it being white.

Hardesty: And you're seeing this happen. What is Rob doing?

Scott: He's looking around for a safe or a—he's getting stuff ready—he's got something flammable.

Hardesty: What is it?

Scott: Um . . . I remember a red can.

Page 47

Scott: Um . . . I remember him looking at the two girls. Robert is getting the place ready to burn.

Page 48

Hardesty: Okay, Michael, who's got that second gun?

Scott: Um . . . Rob does.

Hardesty: What kind of a gun is it? What does it look like? You're in the store.

Scott: A small caliber automatic.

Hardesty: Who did he fire it at?

Scott: I don't know. . .

Scott: Because I was running towards the door. Back down to the door. I . . .

Page 49

Scott: . . . wanted out.

Hardesty: Tell me about the other two girls.

Scott: They were scared. They were crying. One of them said she didn't want to die.

Hardesty: Who tied those girls up?

Scott: Um . . . Rob did.

Hardesty: All four of them?

Scott: I guess I did.

Hardesty: . . . What were they tied up with? Come on, Michael. You know.

Scott: It was white—it was—I remember it being stretched with—I think it was a T-shirt.

Page 50

Hardesty: And you helped Rob tie them up?

Scott: I think—I guess I did.

Hardesty: Yeah. You did. What were the girls wearing by the time they were tied up? What were they wearing? Michael, that's a gimme. That's an easy one.

Scott: Not a whole lot.

Scott: Used their own clothes to tie them up.

Hardesty: Used their own clothes to tie them up. You and Rob. And by the time you were done, what were they wearing? Say it.

Scott: Nothing.

Page 51

Scott: Um . . . I think Robert shot the second one.

Scott: I think it was a semi-automatic.

Scott: He shot her in the back of the head.

Hardesty: . . . The other two girls are still on the floor and they're alive.

Scott: They're on the floor and they're alive there crying.

Scott: I looked up and said, "This is wrong."

Scott: They um . . . Maurice looks up at me and says, "You open your mouth and you're dead too."

Page 52

Hardesty: What happened to the other two? You know, Michael. Don't ask us. You know.

Scott: I'm asking myself the question. I remember one getting hit.

Hardesty: Who hit her?

Page 53

Scott: . . . Maurice did.

Page 54

Scott: I'm trying to cut through a fog.

Hardesty: What did they make you do?

Scott: I remember kicking, I remember hurting the other one. Um . . . I don't—I don't think I raped them. That's not me. Was one of them raped?

Hardesty: Michael, tell us the truth. Was one of them raped? Or two of them . . .

Page 55

Hardesty: . . . raped? Or all of them raped?

Scott: I think one of them got raped.

Hardesty: You think one of them. Which one? Do you remember?

Scott: No. I don't.

Page 56

Hardesty: Whoever raped her, Michael, how was she raped? How did that happen?

Scott: Um . . . she was still on her hands and knees. They got her up on her hands and knees. And started going at her.

Hardesty: Who did?

Scott: Um . . . I think Robert did.

Lara: You know the answer to that one. How were they killed?

Scott: I think one was strangled to death.

Scott: I didn't rape anybody.

Scott: Robert raped one.

Hardesty: How did he rape her?

Page 57

Scott: He—I think he bent her over and just got her. Went after her. Um—

Lara: You need to push a little harder. Come on.

Scott: I remember something about the neck. I don't know if—

Page 58

Lara: It's time to let go, man. It's time to let go and just put it behind you.

Scott: I remember them being tied up with their clothes. I remember the two getting shot in the back of the head.

Scott: I remember one of them getting raped. Because Robert had an itch.

Page 59

Scott: I didn't rape them. I know that.

Hardesty: All right. You didn't rape them.

Page 60

Lara: You're starting to minimize again, Michael.

Hardesty: . . . What did those boys make you do? It ain't kicking, it ain't strangling, it ain't bludgeoning, it ain't knifing. What did they make you do?

Scott: I remember the fire.

Hardesty: Before the fire, Mike.

Page 61

Scott: They didn't make me shoot them, did they?

Hardesty: Well, did they? Tell us. I want to hear it. Did they? Did either Maurice or Robert make you shoot those two girls? Or both of them? Say it, Michael? Is that what happened?

Scott: I think so.

Hardesty: What gun did you use?

Scott: I don't remember.

Hardesty: Who handed you a gun?

Scott: Maurice handed me a gun.

Hardesty: What kind of gun was it?

Scott: It was the revolver.

Page 62

Hardesty: . . . Where did you shoot them? Where on their bodies?

Scott: Quick easy kill, in the back of the head. The head. Temple. Or back.

Hardesty: Back? Or temple? Which one?

Scott: Back of the head.

Page 63

Scott: He said, "You shoot them." I said, "No." And then he said, "You either do it, because we're all in this neck deep."

Hardesty: What did you do?

Scott: I shot them.

Hardesty: Both of them?

Scott: Yeah.

Hardesty: Okay, in the back of the head?

Scott: Yeah.

Hardesty: Are you sure?

Scott: Yeah.

Page 64

Hardesty: Okay. What was Rob doing this whole time?

Scott: Watching me.

Hardesty: Did he say anything to you?

Scott: "Do it, Mike."

Hardesty: Did he say that?

Scott: Yeah.

Scott: "Do it or your next."

Hardesty: Was he holding a gun?

Scott: It was some kind of automatic.

Scott: I think Robert shot one of the girls with it.

Page 65

Hardesty: . . . When he shot that girl, where on the body did he shoot her?

Scott: Back of the head.

Hardesty: . . . Where was she in the store when he shot her?

Scott: Behind the counter.

Page 77

Lara: Do you remember being inside that business?

Scott: I don't—I remember walking in here and getting something to eat. I don't remember walking through the door. I had a nightmare that I saw two girls get shot. I don't remember—I don't remember what happened to these two.

Lara: Just take your time. Okay?

Hardesty: . . . if you could close your eyes...try to remember voices.

Scott: Lot's of screaming.

Page 78

Scott: I hear the same questions being asked again and the same answers being given.

Scott: I hear the gun go off again.

Scott: "Either shoot them or you're next."

Scott: I remember looking at this girl. I cry. I hear Robert saying, "Do it. Do it."

Page 79

Scott: ". . . Do it." I hear the gun go off. I only pulled the trigger once. I turned around. "Here's your stupid gun." I'm in shock by then. I hear another gun go off. I think I hear a total of five shots.

Page 80

Hardesty: Michael, you mentioned one of the girls was raped. And Robert did something to her?

Scott: Robert had an itch.

Scott: I remember helping tie . . . I remember getting done and saying, "Watch the front." And I watched the front.

Hardesty: Who said, "Watch the front?"

Scott: Robert.

Scott: I don't know because I didn't look. I don't remem . . . . I didn't look. I . . .

Page 81

Scott: . . . didn't want to look. They didn't have any clothes on by that time.

Hardesty: Okay, Michael. Let's back up a little bit. How did their clothes end up . . . . how did they end up naked? Who took their clothes off?

Scott: Rob did, I think, while I was holding them.

Hardesty: Okay. All four of the girls?

Scott: Yes sir.

Hardesty: You were scared by that point.

Scott: Scared out of my mind.

Hardesty: Okay. And what did you all tie the girls up with?

Scott: Clothes.

Hardesty: Whose clothes?

Scott: Theirs.

Hardesty: Okay. Can you tell us specifically?

Scott: T-shirts.

Hardesty: T-shirts. What? Anything else?

Scott: T-shirts and blue jeans and whatever undergarments they had on. I don't remember them having undergarments.

Page 87

Scott: Okay. My problem is, is I've hit a bunch of blocks . . . Um . . . I remember casing the place.

Scott: I remember them—I remember them casing and I remember them talking about it, but I don't remember the details.

Merrill: Who is "them?"

Scott: Rob Springsteen and Maurice Johnson. Forrest didn't say a whole lot and I didn't say anything. It was wrong to begin with. Uh, I honestly don't remember going inside, through the doors. But I've pulled details out of my head that should not have been there. Um . . . I had a reoccurring nightmare. I see the first two girls get . . .

Page 88

Scott: . . . shot, in the nightmare, in the back of the head. They're tied up with their clothes. Um . . . um . . . I honestly—I know there was . . . Maurice piled up stuff to burn.

Scott: I remember . . . I remember the 22 revolver. I guess it was. I knew Maurice had the revolver. I was there when he bought it. Um . . . when you pull up to the area you can see the door over here and you could see that it was ajar. Because we had—after we had done this, we had gone through the lot and looked at the building. And one of them piped up and said, "The door's open."

Scott: I d[illegible] want to do this, man. The car was here. For[illegible] got out into the front seat.

Page 89

Scott: What I kept running into was—by my memory, I was in the car. But, yet, I've been able to pull detains out of what's happened in here. Like the girls being stripped and tied up with their own clothes, how the first two girls were killed, and then I hit a wall. I'm trying to be honest with you, sir.

Merrill: I understand.

Scott: I can't honestly say I remember how the other two girls were shot. Now, I—I remember Reese handing—shoving a firearm at me saying, "You shoot one. You're in this neck deep with us." This all sounds contradictory. Doesn't it?

Merrill: . . . those doors will come down, if you want them to. And we want you to want them to.

Scott: I want them to come down. I—I don't want to go to prison.

Merrill: I can understand that.

Scott: I want them to come down. I want to prove that—I didn't this at . . . I didn't do this at my own free will.

Merrill: From what they're telling me, you were almost forced into this.

Page 92

Merrill: Did you do anything else with that gun?

Scott: I heard it go "bang" and I went—I either dropped the gun—I think I hand . . . I threw it back at um . . . Reese.

Merrill: What was Rob doing?

Scott: I think Rob was scratching his itch.

Merrill: And what does that mean to me?

Scott: I think he raped one of them.

Page 100

Merrill: Okay. Did you help undress any of these girls? Did they undress themselves? What happened there?

Scott: They were ordered to undress themselves.

Merrill: Did they?

Scott: Yeah. After a threat.

Scott: I remember them getting undressed.

Scott: They weren't really fighting. Um . . . I was ordered to come help tie them up, and I did. I helped—

Page 101

Scott: I'm at the front looking out front. Rob's at the back.

Scott: Rob is controlling the girls. Maurice is looking for money. And um...not finding what he wants, and asking questions.

Merrill: And Rob's uh, Maurice is looking for?

Merrill: Money. And Rob tells them to get undressed?

Scott: Yes sir.

Scott: They're crying

Page 102

Scott: They're doing what they were told. They don't—one of the girls said, "I don't want to die."

Page 114

Scott: I remember two.

Merrill: Let me ask you this—These girls screamed, didn't they?

Page 115

Merrill: How did they shut them up?

Scott: I think Robert turned around and said, "Shut the fuck up or you're dead."

Scott: No. It didn't work much. And then I . . . I believe he went over there and hit them. I don't know with what, because—I was looking out the front door. I didn't want to see this.

Scott: Yeah. I remember a lot more screaming and crying.

Scott: . . . A lot more hysterical.

Scott: Yeah. I remember the gun being pressed into my hand. And . . .

Page 116

Scott: saying, "Do it. Shoot one. Shoot one or both." I couldn't—I looked at that gun for a good minute or so. And I remember Robert—"Don't be a pussy man, do it."

Scott: Yeah. I remember the whole screaming—"We're dying. We're dying. Please don't kill me."

Merrill: What are you going to tell your wife?

Scott: I don't know. I'm not going to tell her anything. I can't.

Merrill: Why?

Scott: I think I killed somebody.

Page 117

Scott: I guess I suppressed it all out of my head.

Scott: I don't want to sound like—the bottom line is, I don't want to go to prison.

Merrill: I can understand that. I wouldn't either. Do you think you deserve to go?

Scott: No. Well, yeah. I shot somebody.

[Break]

Court Reporter's Record
Volume 65 State's Exhibit 10

Michael Scott Transcript
9-12-99

Page 5

Scott: Yeah. She keeps asking me do I need a lawyer. And I keep telling her it's only going to complicate matters right now.

Court Reporter's Record
Volume 65 State's Exhibit 18

Michael Scott Transcript
9-9-99
Tape #3

Page 3

Merrill: What was the plan, at that point?

Scott: As far as I know it was to go in and look in the place and see what the setup was and get some yogurt.

Scott: Urn . . . I didn't know the plan when we went in there. Robert looked at me and said, "Come on." I followed him out the door—the back door, while Maurice was being a distraction.

Scott: I just remember heading towards the back. We went out the back door and we walked—

Scott: We walked out, on the right, and walked up the wall, and around . . .

Page 4

Scott: . . . the side. And by the time we got back out and around, Maurice was already in the vehicle munching on a yogurt. I remember eating some of it and thinking, "This is my favorite kind of yogurt."

Court Reporter's Record
Volume 65 State's Exhibit #20

STATE'S EXHIBIT NUMBER 20 DESCRIPTION
(INTERVIEW) SEPTEMBER 10, 1999

Michael Scott Interview
September 10, 1999

Page 2

Merrill: . . . You've got something on your mind right now. What is it?

Scott: Yeah. I do.

Page 3

Merrill: Let's hear it.

Scott: I dug myself in a hole yesterday in this room and I don't know how to get out of it.

Merrill: Yesterday is helping you get out of it.

Scott: Is helping me get out of it. But what I'm saying is, is I think I lied to you all yesterday. And I'm not sure if I lied to you all or not.

Merrill: What does that mean?

Scott: I know I went into the place. I know I walked in. I know now that I walked into that place.

Page 4

Scott: Rob and Maurice go into the place. Forrest is sitting here. I'm sitting here. They go in. I look at Forrest. I'm not saying anything to Forrest. I go inside. I hear the gunshots from outside. But I know details. See, I'm questioning myself as to what really happened.

Scott: I hear gunshots.

Scott: I am. I hear the gunshots. I get out of the car. I go to the door. I open the door. I start to walk in. I don't remember seeing—I don't know if this is real or not or if this is what I convinced myself of at the time.

Merrill: What.

Scott: Or if I've convinced myself of this now. Is what I'm—I need help. I need memory cues. I need something to help trigger it. What I remember doing—or what I think I remember doing, is how I should put it, was I was initially in the car. Forrest and I were supposed to watch the lot to see if anybody come out there. I heard the shots. I go in. I go through the doors. Rob's coming—I see Rob coming down the hall. I don't remember seeing the girls. I didn't see Maurice at the time. I come back out. Forrest isn't in the car. I get in—

Scott: Forrest is not in the car. He's gone. I think he got out and he run off. Rob and I get in the car. Then Maurice comes out and we go. But this is total contradictory to what I said yesterday.

Merrill: You're trying to shut a door. In my opinion, you're trying to shut this door. Because yesterday you told us some things about the inside of that place that were very specific.

Scott: Very specific. And I should not have known.

Page 21

Scott: We're sitting in the mall around this round table. Forest, Maurice and Robert. I remember, I remember Maurice saying he needs some money. I don't remember the specific details of what was said. I remember hanging out in the mall Bs'ing with friends. I remember the robbery being discussed, but not the details. Or a robbery being discussed, but not the details. It had not been decided yet where. Everybody goes—Maurice gets up and walks around. I get up with Robert and we walk around looking at the tits and ass running around the mall. I remember walking up the ramp through the mall, and back down. Back to the table. I remember getting up, going out to the car, driving around the Northcross area, and looking for a place. I remember pulling up pin front of the IBC. I remember Maurice going up to the counter and getting a yogurt—the swirled flavored one. I think, but I'm not positive, Rob and I went to use the bathroom. We came out. Somehow we ended up going out the back door. I don't remember where the back door is, but I remember walking out the back door and walking along the wall back to where Maurice was in

the car. I think Forrest came in to use the bathroom, but I'm not sure. I'm not positive. We get back in the car. We either went back to the mall or drove around the neighborhood first and went back to the mall. But one way or another, we went back to the mall. I don't remember if it was discussed anymore at the table. We stay in the mall until late. I remember the theater letting out as we were walking back to the car. I think just about everything in the mall was closed. We get back in the car. We drive around the neighborhood. We make a . . .

Page 22

Scott: . . . couple circuits of the neighborhood making sure there's no police around and there's . . . there's no extra people around. We pull up to the back—we pull up into the alley. Forrest is still in the car. We get out. We all go inside. Yeah, that's—I remember standing there blocking the back way out. I remember one of the girls trying to run out the front door but the door couldn't be gotten open. She gets spun around and brought back to the back. I check the front. The door is locked. I still remember the keys being in the door. I remember Robert hollering at me telling me, "Come help. Come help me with this." I go back. I help bind the girls. Their own clothes are used to bind the girls. I remember tying them with something white. I don't remember whether it was a T-shirt or their bra or undergarment, or what. Rob says, "Go watch the front." I hear the register open. I hear, "Where's the rest of the money?" "You can't get to it." Maurice gets pissed off and I hear a bang. I look back. I look at the noise. I look back out the window. I hear the

same question being asked and the same response. I hear the girls crying, "I don't want to die." I hear another crack—another gunshot. I'm looking out the window. I remember going back to find out what's going on. I remember looking at the gun. I remember hearing, "you better do it because you're neck deep in this already." I remember hearing, "Don't be a pussy. Do it. Just do it." Then I point and pull the trigger. I . . . I remember Maurice gathering up napkins and cups and towels and stuff. I remember walking towards the back door and hearing another crack—or hearing another shot. I remember stopping at the door and looking to see, and here comes Rob. Rob and I both then go out and get in the car. I sit behind the driver—where the driver's seat is. Forrest isn't in the car.

Page 50

Scott: I honestly do not remember shooting.

Merrill: Earlier you were damn sure you shot. You're scared, Mike.

Scott: I'm scared I killed somebody and don't fucking know it.

Merrill: I ain't buying that shit at all.

Merrill: You remember. You don't want to say it.

Merrill: You don't want to be a murderer, do you?

Scott: I want to find out whether I did it or didn't.

Page 52

Merrill: And at one point, Mike, you even said you shot two of them. Didn't you?

Scott: No sir. I didn't.

Merrill: Are you sure about that?

Scott: No, I'm not. I can't even remember half of what I said yesterday. I'm trying to remember. I don't remember.

Merrill: But you ain't him. You're on the floor doing the deed. You're participating, you're working with, and you're doing things in there. And while ago you said, "I think I set the fire."

Scott: Yes sir. I think I—

Scott: You helped me trigger a memory.

Merrill: Okay. How? What did I say?

Scott: You said "firebug." And, yes, at one time I was a firebug.

Page 53

Merrill: Did you set the fire, Mike?

Scott: Yes sir.

Merrill: Where?

Scott: I don't remember where.

Merrill: Oh—now I ain't buying that. I ain't buying selective memory, memory loss. You know you set the fire, but you don't know where?

Page 55

Scott: I—I—I keep hitting a wall.

Merrill: Yeah. I think we're done.

Scott: Are you all going to keep me here?

Merrill: No. You're not under arrest. Mike, you can get up and walk out this door anytime you want.

Page 57

Scott: I don't remember pulling the fucking trigger. I don't even remember having a gun in my hand. I was telling you all what you all wanted to know.

Merrill: Nah, I ain't buying that. I ain't buying that at all, Mike.

Scott: I'm not buying it myself.

Merrill: You know too much . . . . you know too much about the inside of that place that somebody that wasn't there wouldn't know. Do you understand me?

Scott: Yes sir.

Page 58

Scott: Do you all have a drawn layout of what the inside of the place looks like?

Scott: Can I be allowed to look at it?

Merrill: We've thought about that. And we're continuing to think about that.

Scott: Okay. I . . . I think it will help.

Merrill: Do we need to talk any more? Or are we done? Or what? What do you think? Are we going to straighten all this out?

Scott: I only shot the gun one time.

Page 59

Merrill: What did you remember when I scared you?

Merrill: You remembered something else. "I set the fire."

Scott: Yes. I set the fire but I don't remember where I set it at. I remember piling it all onto—I remember piling all that stuff on top of something.

Merrill: Okay. What stuff are we talking about?

Scott: Napkins, cups, anything burnable in the place.

Scott: I remember a can of Zippo fluid.

Page 60

Merrill: Where did that come from?

Scott: Out of Maurice's car.

Page 64

Scott: I smell paper, I smell paint, I smell cotton burning, I smell—

Abreo: Go ahead, Michael.

Scott: I set them on fire.

Abreo: It's all right, Michael.

Scott: (Crying) I set them on fire.

Page 65

Scott: I remember I saw—they hadn't loaded the cups back up where they were supposed to be. They were laying out. I picked the thing of them up and . . . and threw them into the pile. There was a thing of napkins laying out there. I threw it into the pile.

Abreo: How close was the pile to the girls?

Scott: I don't remember yet. I will remember.

Scott: They were all laying down.

Page 66

Abreo: Michael, you can remember that. Because you're spraying lighter fluid on them. You're spraying every one of them with lighter fluid, Michael. What was the reason for the fire?

Scott: Because—

Abreo: Go ahead and tell me.

Scott: I was brought into this—I didn't—

Abreo: What was the reason for the fire?

Scott: To destroy evidence.

Page 67

Abreo: Who all lit lighters to light the fire?

Scott: Maurice and I. I and Maurice. He had one too.

Scott: No sir. I remember . . . I staggered out.

Abreo: Why did you stagger out?

Scott: I was . . . . I was sick. I was in . . . I was . . . I was sick.

Abreo: Why?

Scott: At me. For what I had done and participated in.

Page 68

Abreo: Which is what, Michael?

Scott: I helped commit murder and—

Scott: They made me shoot her.

Abreo: And what else? What else did you do that made you so sick, Michael?

Scott: I . . . I burned them.

Merrill: What else did you do?

Scott: I can't—

Merrill: What else happened to those girls before the fire was set?

Scott: They made me rape one of them.

Abreo: Which one, Michael?

Scott: I can't recall a face. I can't see any of their faces. They made me rape one of them. They made me shoot somebody. I deserve to die.

Page 73

Scott: I pulled one on top of the other. I threw all the stuff on them.

Scott: I lit the fire. I remember seeing the smoke and the nasty smell. And I ran out.

Scott: Yes. I want this to be done. I want whatever is going to happen to me to happen.

Scott: I want them to fucking go to prison for what they made me do.

Merrill: Work with us, Michael.

Scott: Keep asking me questions.

Page 76

Abreo: How many times had you tried to rape that girl?

Scott: Twice.

Abreo: Okay. Now when you were up looking into her face, when you looked into her face, what did you see, Michael? Was she crying, Michael? Was she saying anything?

Scott: She could not.

Scott: She was gagged.

Scott: She had some . . . she had something stuffed in her mouth.

Abreo: Okay. What do you think it was, Michael? What do you think she had stuffed in her mouth?

Scott: It was something—I remember—

Page 78

Scott It was white.

Merrill: What is that?

Scott: Come out—what is it? What was it?

Merrill: You know what it was. There's no doubt in my mind. Because she's sitting here going—

Scott: And it's hanging out of her mouth.

Merrill: What is it?

Scott: A towel. A white Terri-cloth towel. A white towel.

Page 79

Scott: There wasn't any noise other than whimpering coming out of them.

Page 80

Merrill: What else was going on?

Scott: I remember Rob off to my right. My right side. He was—he—he had the Hispanic girl. He had her up on her—he had her up on her—he was fucking her from behind.

Scott: I remember her giving him a hard time.

Scott: She's fighting, she's moving.

Page 81

Scott: He does her. He does her. And I want to say he shoots her in the back of the head.

Court Reporter's Record
Volume 65 State's Exhibit #16

STATE'S EXHIBIT NUMBER I6 DESCRIPTION
(AUDIO TAPE)

Tape 2- 9/I3/99

Page 5

Lara: . . . Did you tell your wife you were involved in these murders?

Scott: She knows that I was involved in something real bad. She knows—she's scared. She knows I was . . . she knows I was involved, guys. She's . . . she's done a lot of figuring out herself. I haven't come right out and said it to her.

Scott: I told her at the minimum I'm looking at time. And at the extreme I'm looking at the death penalty.

Scott: . . . Patrick. Doing something like that. "Man, all the years I've known you, if I knew you'd done something like that, I would have taken something like that out on you."

Fuentes: Did you tell him why you did it?

Scott: I told him it was self-preservation. It was—do it or you're next.

Lara: Who is this guy, Pat?

Page 6

Scott: Patrick is—oh, man. Pat is this guy—Patrick (inaudible). A long, long time. I met him right after this shit happened.

Scott: I've told them I'm in a lot of fucking trouble. I've told them there's three other guys telling

another story than what I've got. Um...I've told them unless I can come up with this crucial piece, I'm screwed. Um...I haven't come out and right out flat out told anybody what happened. I mean, my Dad figured it out. Just my Dad.

Scott: Me, my wife, and my Dad. The kid was asleep. We stepped outside and talked. I said, "Hey, look Dad, I'm in a lot of trouble." He said, "Could you tell me what?" "I can't tell you specifically what Dad Think about seven or eight years ago. Think about who I was living with."

Fuentes: What did he say?

Scott: "Well, son, I'm really sorry. You're in deep. You can't go back and change the past."

Page 7

Fuentes: Do you think he suspected anything back then?

Scott: I think he did. Because, I mean, I'd come around their house and I was—I was in a daze.

Fuentes: Yeah. Mom and Dad's know a lot. They read their kids.

Scott: Mom and Dad knew there was something wrong with me. I can't . . . I kind of remember showing up at my parent's house after that. And I think I wanted to tell my parent's—I wanted to tell my parents, "I'm not sure, but I think I did something bad. I need help. I'm scared for my life. I'm scared to talk to anybody." I mean, I'm not scared—I'm pissed off at these guys. I've never seen my Dad cry.

Page 12

Scott: We stopped the car. Forrest is supposed to honk the horn if anybody shows up. We go inside. We

go inside. We go inside. One of the girls—Rob has one of the girls. She gets spun around. She gets shoved back towards the back. I'm right behind him. I follow up right behind Robby. I check the door. The door's locked. I'm looking out that front glass. I hear the, "Come help me with this." I go over to where Robby's at. I help him bind the girls. Paper towels. Robby handed me like paper napkins. "Here, stuff these in her mouth." Because I remember my finger poking through the napkin. I get up. I go look out the front door again. I go back. I look at Robby. This is going to seem stupid to you all. My wife's allergic to cats, but I love cats. It doesn't purr though. I look out that front door. I look out that front door. I come back and I look at Robby. Robby's got one of these girls and—

Scott: Robby's got her up on her hands and knees. And I don't remember her having any clothes on. And I'm . . . I'm looking at Robby. I don't know if I was saying it out loud, "This is wrong, man. This isn't what you said."

Scott: He's . . . he's raping her.

Page 13

Scott: He's got her up on her hands and knees and he's raping her.

Scott: I remember her having dark hair. I don't remember seeing her face. I couldn't see her face.

Lara: I'm looking and going, "This is wrong."

Scott: I remember him getting done and standing up and looking at me. "You're in this all the way, Mike. Do her." I remember trying but not being able to do it.

Scott: No. I remember feeling sick and disgusted with myself. I remember being sick and disgusted with myself and looking at this gun. I remember my ears ringing. I remember the one that I tried to . . . to rape still being alive. Robby handed me the gun and I look at the gun. "This is wrong." I remember hearing, "Just fucking do her or you're next." I pointed that gun and I pulled the trigger. And I didn't want the gun anymore. But I don't remember if I dropped the gun or I threw it at Robby or I handed it back to Robby.

APPENDIX D

VOLUNTARY STATEMENT

(EXCERPTS)

At 10:39 o'clock a.m. on the 14th day of September, 1999, and before making the following statement, I, Michael James Scott, while at the Austin Police Department was warned by Detective Manuel Fuentes, to whom this statement is given, of my rights as follows:

1. I have the right to remain silent and not to make any statement at all, and that any statement I do make may be used against me at my trial;

2. Any statement I make may be used against me in court;

3. I have the right to have a lawyer present to advise me prior to and during any questioning;

4. If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning; and

5. I have the right to terminate the interview at any time.

I, the undersigned, received the foregoing warnings. I fully understand each and all the rights contained in this warning. I do hereby knowingly, intelligently and voluntarily waive all my above rights. I make the following statement in writing without any threats or promises of any kind having been made to me

My name is Michael James Scott; I am 25 years old; I was born on 02/06/1974.

I am currently at the Austin Police Department homicide office at the Twin Towers giving this statement to Detective Manuel Fuentes and Texas Ranger Sal Abreo. I am giving this statement about my involvement in the death of the four

girls at the yogurt shop on December 6th, 1991. I have previously given accounts of what happened in 1991 and afterwards to Detective Fuentes, Texas Ranger Sal Abreo, Detective Merrill, Detective Ron Lara and other detectives. Today I told Detective Fuentes and Texas Ranger Sal Abreo that now that I have confessed to my father and my best friend Patrick Davidson in my part in the girls' death, I have been able to remember and I want this statement to be correct and truthful. These things I will clear up in this statement such as what I threw off the bridge after the murders. I had previously said that I threw a set of keys off the bridge; it was actually a cutting knife that I got from the inside the yogurt shop. And when I told you that I didn't really remember what happened to the second gun, the small semiautomatic pistol, I do remember that I gave it to my friend Patrick Davidson in December 1992 so that he could get rid of it. I did not want to pull him into this, and that is why I had been so hesitant to tell you what happened to the gun. If something happens to him, he has nothing to fall back on. I will explain this more in detail later.

On December 6th, 1991, I don't remember exactly what time it was, but it was still daylight. Drove up to the strip mall where the I Can't Believe It's Yogurt shop was at. Go inside and take a look at the yogurt shop. Got up and made it look like going to the restroom. Walked out the back and walked around to the front of the building. Drove back to the mall. Left Northcross Mall. Drove through the alley behind the stores to see if the back double doors were still slightly open. The building was on the driver's side, the left side of the car.

I brought the can of Zippo lighter fluid. It was the bigger metal can. Went into the back door. One of the girls said something like, "Hey, you, what are you doing? You don't belong in here." This girl was wearing a T-shirt. I believe, that had the name I Can't Believe It's Yogurt on it. I believe that she was working in the back room. Expected to find only

two girls inside the store, and there were two other girls up front in the dining room area sitting down. I could see the commotion going on up front. I checked the door, and it was locked. There was one key in the lock; the door was locked. I looked outside to make sure no one was looking in. As this went along, I got more and more scared. I looked out to check the front again. I heard the girls crying and one of the girls say that that's all there is. It's already been dropped and you can't get to it. I went back there. I saw that all four girls were naked. I went to the pile of the clothes and picked up some clothes to use to tie them up.

I remember a T-shirt and a bra used to tie them up. The girls were crying and whimpering. They were begging not to kill them. They said that they didn't want to die. I got a paper towel and put it inside one of the girl's mouth. I remember that my finger pushed through the towel when I was trying to stuff it in her mouth. This may not have worked, so I might have had to use something else to stuff in her mouth. It was white like terry cloth. The girls were on their knees. I don't believe they were standing up because I was looking down at them. I went to the back and saw one of the dark-haired girls on her hands and knees. I got on top of her. I tried to do her from the front. I looked at her face. I didn't want to look at her face. She had a piece of a white terry cloth towel on her mouth. I looked away because I didn't want to see her. I couldn't get it up because I knew that what I was doing was wrong. I sort of faked it. The girl was still on the floor. I pointed the gun at her and tried to shoot at first but couldn't. I pointed the gun again at the girl and fired once into her head.

I don't remember seeing a safe, but I don't remember what she was doing down on the floor. I remember looking in the doorway, and the gun is still in my hand. I saw the side profile of this girl. She had like a white shirt on. I think I shot her in the head. I've been not wanting to remember this. I know I've told you something different, but I did her too. I

dropped the revolver. I thought I left it in the car. I looked at the floorboard and picked up the lighter fluid. I went back inside. I saw the girls laying there and I pulled one of the girls on top of the other. I gathered up napkins, cups and paper towels and piled them on top of the three girls. I sprayed Zippo fluid on top of the girls. I emptied the can of lighter fluid. I had a Zippo lighter with me and lit the fire. I heard a whoosh sound of the accelerant when it caught fire. I don't remember what I did with the can. I could have threw it in the pile of stuff in the back of the store.

I remember that my only thought was to get out. I went outside. I had taken a knife from inside the shop. I believe I got it off the counter. It was a nice knife. I told you all before that I had taken a set of keys, but it was a knife; I remember now that it was a knife.

I remember driving but I don't remember what direction.

I got out and threw up over the railing of the bridge. I took the knife and I threw it over the rail also. I made sure it was gone. I remember trees and I don't remember seeing any water. I got back into the car. I don't know what happened next. I remember being back at the apartment.

Detective Fuentes asked me to describe the two guns. A black .22-caliber revolver, small; I think it had wood grips. A small, semiautomatic pistol; it had a clip. I think it was a .38. Some of the writing on the gun was scratched off.

On the weekend I rode to San Antonio. I got a hold of a newspaper and I remember reading about the fire and the yogurt shop murders. I read it out loud. I remember getting back home and wanting to do nothing more than sleep. The semiautomatic was laying on the bed. I knew that I had to get rid of it. I picked it up and left the apartment. I remember walking past a dumpster and thinking that I should just throw it in the dumpster. I walked into the creek in the apartment. complex. I put it in a hole in the side of the wall in the creek.

I wedge another rock in it. I stacked some rocks near it as a marker to remind me where it put it.

In December of 1992, I was smoking a lot of pot. I had been drinking a lot too and started having flashbacks. I went back out to the creek and found the gun. I took the gun and put it in a brown paper back that I found in the creek. I took the gun back to south Austin to our apartment. I told Pat that I needed to get rid of what was in the sack. I didn't tell him. He told me that he put it out in the trash.

I can read, write, and understand the English language, and the above statement I have read, and it is true and correct to the best of my knowledge and belief. Signed, Mike J. Scott.

APPENDIX E

VOLUNTARY STATEMENT

AT 10:39 O'CLOCK A.M.ON THE 14TH DAY OF SEPTEMBER, 1999, AND BEFORE MAKING THE FOLLOWING STATEMENT, I, MICHAEL JAMES SCOTT, WHILE AT THE AUSTIN POLICE DEPARTMENT WAS WARNED BY DETECTIVE MANUEL FUENTES, TO WHOM THIS STATEMENT IS GIVEN, OF MY RIGHTS AS FOLLOWS:

___ 1. I HAVE THE RIGHT TO REMAIN SILENT AND NOT TO MAKE ANY STATEMENT AT ALL, AND THAT ANY STATEMENT I DO MAKE MAY BE USED AGAINST ME AT MY TRIAL;

___ 2. ANY STATEMENT I MAKE MAY BE USED AGAINST ME IN COURT;

___ 3. I HAVE THE RIGHT TO HAVE A LAWYER PRESENT TO ADVISE ME PRIOR TO AND DURING ANY QUESTIONING;

___ 4. IF I AM UNABLE TO EMPLOY A LAWYER, I HAVE THE RIGHT TO HAVE A LAWYER APPOINTED TO ADVISE ME PRIOR TO AND DURING ANY QUESTIONING; AND,

___ 5. I HAVE THE RIGHT TO TERMINATE THE INTERVIEW AT ANY TIME.

I THE UNDERSIGNED, RECEIVED THE FOREGOING WARNINGS, I FULLY UNDERSTAND EACH AND ALL OF THE RIGHTS CONTAINED IN THIS WARNING, I DO HEREBY KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WAIVE ALL MY ABOVE RIGHTS. I MAKE THE FOLLOWING STATEMENT IN WRITING WITHOUT ANY THREATS OR PROMISES OF ANY KIND HAVING BEEN MADE TO ME.

MY NAME IS MICHAEL JAMES SCOTT, I AM 25 YEARS OLD, I WAS BORN ON 02/06/1974. I CURRENTLY LIVE AT 11157 F.M. 967, BUDA, TEXAS. MY HOME TELEPHONE NUMBER IS 894-0235. 1 AM UNEMPLOYED RIGHT NOW. MY SOCIAL SECURITY NUMBER IS 465-91-4376. MY TEXAS DRIVERS LICENSE NUMBER IS 11075970.

I AM CURRENTLY AT THE AUSTIN POLICE DEPARTMENT HOMICIDE OFFICE AT THE TWIN TOWERS GIVING THE STATEMENT TO DETECTIVE MANUEL FUENTES AND TEXAS RANGER SAL ABREO. I AM GIVING THIS STATEMENT ABOUT MY INVOLVEMENT IN THE DEATH OF THE FOUR GIRLS AT THE YOGURT SHOP ON DECEMBER 6TH, 1991. I HAVE PREVIOUSLY GIVEN ACCOUNTS OF WHAT HAPPENED IN 1991 AND AFTERWARDS TO DETECTIVE FUENTES, TEXAS RANGER SAL ABREO, DETECTIVE MERRILL, DETECTIVE RON LARA AND OTHER DETECTIVES. TODAY I TOLD DETECTIVE FUENTES AND TEXAS RANGER SAL ABREO THAT NOW THAT I HAVE CONFESSED TO MY FATHER AND MY BEST FRIEND PATRICK DAVIDSON IN MY PART IN THE GIRLS DEATH, I HAVE BEEN ABLE TO REMEMBER AND I WANT THIS STATEMENT TO BE CORRECT AND TRUTHFULL. THESE THINGS I WILL CLEAR UP IN THIS STATEMENT SUCH AS WHAT I THREW OFF THE BRIDGE AFTER THE MURDERS. I HAD PREVIOUSLY SAID THAT I THREW A SET OF KEYS OFF THE BRIDGE, IT WAS ACTUALLY A CUTTING KNIFE THAT 1 GOT FROM INSIDE THE YOGURT SHOP. AND WHEN I TOLD YOU THAT I DIDN'T REALLY REMMEBER WHAT HAPPENED TO THE SECOND GUN, THE SMALL SEMI AUTOMATIC PISTOL, I DO REMEMBER THAT I GAVE IT TO MY FRIEND PATRICK DAVIDSON IN DECEMBER 1992 SO THAT HE COULD GET RID OF IT. I DID NOT WANT TO

PULL HIM INTO THIS AND THAT IS WHY I HAD BEEN SO HESITANT TO TELL YOU WHAT HAPPENED TO THE GUN. IF SOMETHING HAPPENS TO HIM HE HAS NOTHING TO FALL BACK ON. I WILL EXPLAIN THIS MORE IN DETAIL LATER.

ON DECEMBER 6TH, 1991, I WAS WITH MY FRIENDS MAURICE, ROB SPRINGSTEEN AND FOREST. I WASN'T SURE ABOUT MAURICE AND FOREST'S LAST NAME. I HAD BEEN LIVING WITH ROB SPRINGSTEEN AT HIS FATHER CONDIMINIUM ON DRY CREEK DRIVE. I THINK THE APARTMENT WAS RIGHT ACROSS FROM THE SWIMMING POOL. WE WERE AT NORTHCROSS MALL SITTING AT A ROUND TABLE AT THE FOOD COURT. MAURICE BROUGHT UP THAT HE NEEDED TO GET SOME MONEY. I DON'T REMEMBER THE SPECIFICS ABOUT WHAT WAS DISCUSSED BUT I DO KNOW THAT THIS IS WHAT BROUGHT WHAT ALL THIS TO BE. MAURICE AND ROB TALKED ABOUT ROBBING A PLACE, A THEY SAID THAT THIS WOULD BE THE EASIEST WAY TO GET SOME MONEY. I GOT UP AND WALKED AROUND THE MALL. I REMEMBER BEING IN THE ARCADE AND THEN I REMEMBER COMING BACK TO THE TABLE AND SITTING DOWN. MAURICE GOT UP AND WALKED AROUND WITH SOMEBODY. I DON'T KNOW WHO IT WAS, I HAD SEEN HIM BEFORE BUT DIDN'T KNOW WHO HE WAS. RANGER ABREO ASKED ME WHAT TIME WAS THIS HAPPENING. I DON'T REMEMBER EXACTLY WHAT TIME IT WAS BUT IT WAS STILL DAYLIGHT. WE WERE ALL AT THE TABLE WHEN MAURICE SAID THAT WE NEEDED TO GO AND LOOK AROUND. I BELIEVED HIM TO MEAN THAT HE WANTED TO FIND A PLACE TO ROB. WHEN WE LEFT, MAURICE WAS DRIVING HIS DAD'S GREY FORD LTD. ROB WAS SITTING IN THE RIGHT FRONT SEAT. I SAT

BACK BEHIND THE DRIVER. FORREST WAS IN THE BACK SEAT WITH ME. WE DROVE AROUND AND LOOKED AT THE BUSINESSES AROUND THE NORTHCROSS AREA. WE DROVE UP TO THE STRIP MALL WHERE THE I CAN'T BELIEVE IT'S YOGURT SHOP WAS AT. WE LOOKED AT THE BUSINESSES THAT WERE AT THE MALL. MAURICE WAS THE ONE THAT SAID SOMETHING LIKE LETS GO INSIDE AND TAKE A LOOK AT THE YOGURT SHOP. MAURICE WENT IN AND BOUGHT A YOGURT SWIRL, CHOCOLATE AND VANILLA. I FOLLOWED ROB INSIDE. I SAT DOWN AND ROB CAME OVER AND SAID SOMETHING TO ME AND WE GOT UP AND MADE IT LOOK LIKE WE WERE GOING TO THE RESTROOM. MAURICE WAS UP AT THE COUNTER TALKING TO AT LEAST ONE OF THE GIRLS. I REMEBER THAT HE WAS TALKING TO THE DARK HAIRED GIRL. MAURICE WAS SUPPOSE TO DISTRACT THEM. ROB AND I WALKED OUT THE BACK AND WALKED AROUND TO THE FRONT OF THE BUILDING. WHEN WE GOT AROUND TO THE FRONT, MAURICE WAS ALREADY IN THE CAR EATING HIS YOGURT. WE DROVE BACK TO THE MALL AND WE SAT AT THE SAME TABLE. IT WAS THE SAME TABLE WE ALWAYS SAT AT. DETECTIVE FUENTES ASKED ME IF WE WERE ARMED AT THE TIME WE CASED THE STORE. NO, THE GUNS WERE LEFT INSIDE THE CAR AT THE TIME. WE SAT AT THE TABLE AND "BS'ING WITH FORREST. WE WERE JUST TALKING, NOT ABOUT WHAT WAS FIXIN TO HAPPEN. I REMEMBER EATING SOME CURLY FRIES AND IT WAS STRANGE THAT I REMEMBER A LARGE MEXICAN BOY THAT WE ALL KNEW IN PASSING WHO HAD COME SIT DOWN WITH US. THIS MEXICAN BOY PICKED UP THE BOAT CONTAINER OF KETSUP AND STARTED DRINKING IT. I WALKED AROUND THE MALL WITH

ROB. WE RAN INTO MAURICE AGAIN WHILE WE WERE WALKING AROUND. MAURICE TOLD US THAT IT WAS TIME TO GO. WE GOT BACK INTO HIS CAR. MAURICE WAS DRIVING, I WAS IN THE BACK SEAT AND ROB AND FORREST WHERE IN THE CAR WITH US. WE DROVE AROUND THE NEIGHBORHOOD MORE. I THINK WE WERE LOOKING FOR A ROUTE TO TAKE AND THERE WAS TALK ABOUT HOW OFTEN THE COPS DROVE AROUND AND IF THERE WAS A GENERAL ROUTE THEY DROVE AROUND IN. I KNOW IT WAS DARK WHEN WE LEFT NORTH-CROSS MALL. MOST OF THE BUSINESSES WERE CLOSED WHEN WE GOT OVER TO THE YOGURT SHOP. WE DROVE ACROSS THE PARKING LOT, AND DROVE THROUGH THE ALLEY BEHIND THE STORES. WE WANTED TO SEE IF THERE WAS ANY VEHICLES PARKED IN THE BACK OR IF THERE WERE ANY PEOPLE BACK THERE. I BELIEVE WE EVEN WANTED TO SEE IF THE BACK DOUBLE DOORS WERE STILL SLIGHTLY OPEN. WE DROVE BACK THROUGH THE PARKING LOT AND THEN BACK TO THE REAR OF THE STORE. I REMEMBER THE BUILDING WAS ON THE DRIVER SIDE, THE LEFT SIDE OF THE CAR. WE STOPPED JUST PAST THE DOUBLE DOORS, NOT MORE THAN 50 FEET PAST THE DOORS. MAURICE TOLD FORREST THAT THE ONLY THING HE HAD TO DO WAS HONK THE HORN IF ANYONE WAS COMING. MAURICE PULLED HIS GUN OUT. I BELIEVE THAT HE HAD IT IN BETWEEN SEAT. I KNOW ROB HAD A GUN BECAUSE HE LOOKED AT IT BEFORE WE WENT INSIDE TO MAKE SURE IT WAS LOADED. BEFORE WE WENT IN MAURICE TOLD ME TO MAKE SURE THAT I BROUGHT THE CAN OF ZIPPO LIGHTER FLUID. IT WAS THE BIGGER METAL CAN. TEXAS RANGER SAL ABREO ASKED ME WHY I THOUGHT WE BROUGHT

THE CAN OF LIGHTER FLUID. I BELIEVED MAURICE WANTED IT TO USE IT TO COVER OUR TRACKS. WE WENT INTO THE BACK DOOR. MAURICE WENT IN FIRST, THEN ROB AND THEN I FOLLOWED THEM. ONE OF THE GIRLS SAID SOMETHING LIKE, HEY YOU, WHAT ARE YOU DOING, YOU DON'T BELONG IN HERE. THIS GIRL WAS WEARING A T-SHIRT I BELIEVE THAT HAD THE NAME I CAN'T BELIEVE IT'S YOGURT ON IT. I BELIEVE THAT SHE WAS WORKING IN THE BACK ROOM WHEN WE ENTERED THE BACK. ROB TOLD ME TO STOP AND STAY RIGHT THERE AND NOT LET ANYONE OUT THE BACK. WE WERE ALL SURPRISED BECAUSE WE EXPECTED TO FIND ONLY TWO GIRLS INSIDE THE STORE AND THERE WERE TWO OTHER GIRLS UP FRONT IN THE DINNING ROOM AREA SITTING DOWN. I COULD SEE THE COMOSION GOING ON UP FRONT. I REMEMBER MAURICE TOLD ME TO CHECK THE FRONT DOOR TO MAKE SURE IT WAS LOCKED. HE ALSO TOLD ME TO CHECK TO SEE IF THERE WAS ANYONE OUT FRONT THAT COULD SEE US. I CHECKED THE DOOR AND IT WAS LOCKED. THERE WAS ONE KEY IN THE LOCK. THE DOOR WAS LOCKED. I LOOKED OUT SIDE TO MAKE SURE NO ONE WAS LOOKING IN. AS THIS WENT ALONG I GOT MORE AND MORE SCARED. I HEARD THE CASH REGISTER OPEN. I HEARD THE DRAWER BEING LIFTED AND SLAMMED BACK. I SAW MAURICE AT THE CASH REGISTER AND I SAW HIM PUT SOMETHING IN HIS POCKET. I THOUGHT TO MYSELF THAT HE HAD JUST PUT MONEY IN HIS POCKET. ALL THE GIRLS WERE IN THE BACK WITH ROB. I LOOKED OUT TO CHECK THE FRONT AGAIN. I HEARD MAURICE SAY SOMETHING LIKE WHERE IN THE FUCK IS THE REST OF THE MONEY. I HEARD THE GIRLS CRYING AND ONE OF THE GIRLS SAY

THAT THAT'S ALL THERE IS, IT'S ALREADY BEEN DROPPED AND YOU CAN'T GET TO IT. I HEARD ROB SAY COME HELP ME WITH THIS. I WENT BACK THERE AND HE WANTED HELP TYING THEM UP. WHEN I WENT BACK THERE, I SAW THAT ALL FOUR GIRLS WERE NAKED. I BELIEVE THIS IS THE WAY THAT IT WAS BECAUSE I DON'T REMEMBER PULLING THEIR CLOTHES OFF. I WENT TO THE PILE OF THE CLOTHES AND PICKED UP SOME CLOTHES TO USE TO TIE THEM UP. I REMEMBER A T-SHIRT AND A BRA THAT WE USED TO TIE THEM UP. THE GIRLS WERE CRYING AND WIMPERING. THEY WERE BEGGING FOR US NOT TO KILL THEM. THEY SAID THAT THEY DIDN'T WANT TO DIE. I GOT A PAPER TOWEL AND PUT IT INSIDE ONE OF THE GIRLS MOUTH. I REMEMBER THAT MY FINGER PUSHED THROUGH THE TOWEL WHEN I WAS TRYING TO STUFF IT IN HER MOUTH. THIS MAY NOT HAVE WORKED I MIGHT HAVE HAD TO USE SOMETHING ELSE TO STUFF IN HER MOUTH. IT WAS WHITE LIKE TERRY CLOTH. THE GIRLS WERE ON THEIR KNEES. I DON'T BELIEVE THEY WERE STANDING UP BECAUSE I WAS LOOKING DOWN AT THEM. ROB TOLD ME TO CHECK THE FRONT AGAIN. I WENT UP FRONT AND REMEMBER WHAT SOUNDED LIKE ONE OF THE GIRLS TRYING TO SCREAM. MAURICE WAS SCREAMING SAYING "WHERE THE FUCK IS THE REST OF THE MONEY". I HEARD A BANG, A CRACK. IT SOUNDED LIKE A GUN GOING OFF. I CHECKED THE LOCK ONE LAST TIME AND TURNED AROUND TO GO SEE WHAT HAPPENED. ONE OF THE GIRLS WAS ALREADY DEAD. I THINK MAURICE SHOT THAT ONE. AFTER THE SHOT MAURICE SAID AGAIN, WHERE IN THE FUCK IS THE REST OF THE MONEY AND THERE WAS A SECOND SHOT. I WENT TO THE BACK AND SAW ROB AND HE HAD ONE OF THE

DARK HAIRED GIRLS ON HER HANDS AND KNEES AND HE'S RAPING HER, RAPING HER HARD. I TOLD ROB THAT THIS WASN'T RIGHT, THAT'S NOT WHAT HE CAME HERE FOR. ROB STOOD UP I DON'T KNOW IF HE FINISHED, I DID NOT SEE HIS DICK. I KNOW THAT MAURICE WAS NOT BACK THERE WITH ROB. MAURICE HAD GONE INTO AN OFFICE AND HE HAD ONE OF THE GIRLS WITH HIM. SHE WAS SQUATED DOWN AND I THINK SHE WAS TRYING TO OPEN A SAFE OR SOMETHING. ROB TOLD ME TO DO ONE OF THE GIRLS. I BELIEVE IT WAS THE ONE THAT HE JUST DID. HE TOLD ME NOT TO BE A PUSSY AND TOLD ME THAT IF I DIDN'T THEN I WAS NEXT. WE LAID THE GIRL ON THE FLOOR AND I GOT ON TOP OF HER. I TRIED TO DO HER FROM THE FRONT. I LOOKED AT HER FACE, I DIDN'T WANT TO LOOK AT HER FACE. SHE HAD A PIECE OF A WHITE TERRY CLOTH TOWEL ON HER MOUTH. I LOOKED AWAY BECAUSE I DIDN'T WANT TO SEE HER. I COULDN'T GET IT UP BECAUSE I KNEW THAT WHAT I WAS DOING WAS WRONG. I SORT OF FAKED IT TO MAKE ROB THINK THAT I DID HER. I GOT UP AND REMEMBER EITHER MAURICE OR ROB TELLING ME TO FINISH HER. I REMEMBER GRABBING THE REVOLVER FROM MAURICE. HE TOLD ME TO FINISH HER. THE GIRL WAS STILL ON THE FLOOR. I POINTED THE GUN AT HER AND TRIED TO SHOOT AT FIRST BUT COULDN'T. MAURICE TOLD ME TO DO IT OR I WOULD BE NEXT. I POINTED THE GUN AGAIN AT THE GIRL AND FIRED ONCE INTO HER HEAD. I REMEMBER ROB PUSHED ME TOWARD MAURICE. MAURICE WAS IN THE OTHER ROOM WITH THE OTHER GIRL. I DON'T REMEMBER SEEING A SAFE BUT I DON'T REMEMBER WHAT SHE WAS DOING DOWN ON THE FLOOR. I REMEMBER LOOKING IN THE DOORWAY AND THE GUN IS STILL

IN MY HAND. MAURICE ASKED ROB IF I DID IT AND ROB SAID "YEA HE FINISHED HER". MAURICE TOLD ME "YOUR IN THIS NECK DEEP ALREADY". I SAW THE SIDE PROFILE OF THIS GIRL. SHE HAD LIKE A WHITE SHIRT ON. I THINK SHE HAD DARK HAIR. ROB WAS STANDING RIGHT THERE AND HE HAD THE SMALL SEMI AUTOMATIC GUN. ROB TOLD ME NOT TO ME BE A PUSS. I THINK I SHOT HER IN THE HEAD. I'VE BEEN NOT WANTING TO REMEMBER THIS. I KNOW I'VE TOLD YOU SOMETHING DIFFERENT, BUT I DID HER TOO BECAUSE MAURICE AND ROB WERE PRESSURING ME. I DROPPED THE REVOLVER. MAURICE WAS MAD AT ME HE ASKED ME WHERE THE LIGHTER FLUID WAS AND I THOUGHT I LEFT IT IN THE CAR. HE TOLD ME TO GO OUT TO THE CAR AND GET IT. I LOOKED AT FORREST AND THEN I LOOKD AT THE FLOOR BOARD AND PICKED UP THE LIGHTER FLUID. FORREST DIDN'T SAY A WORD. I WENT BACK INSIDE. ROB TOLD ME TO BURN THE PLACE. I SAW THE GIRLS LAYING THERE AND I PULLED ONE OF THE GIRLS ON TOP OF THE OTHER. ROB WAS WATCHING ME AS I GATHERED UP NAPKINS, CUPS AND PAPER TOWELS AND PILED THEM ON TOP OF THE THREE GIRLS. I SPRAYED ZIPPO FLUID ON TOP OF THE GIRLS. I EMPTIED THE CAN OF LIGHTER FLUID. I HAD A ZIPPO LIGHTER WITH ME AND LIT THE FIRE. I HEARD A WOOSH SOUND OF THE EXCELLERANT WHEN IT CAUGHT FIRE. I DON'T REMEMBER WHAT I DID WITH THE CAN, I COULD HAVE THREW IT IN THE PILE OF STUFF IN THE BACK OF THE STORE. I REMEMBER THAT MY ONLY THOUGHT WAS TO GET OUT. I WENT OUTSIDE AND REMEMBERED THAT FORREST WAS NOT IN THE CAR ANYMORE. I HAD TAKEN A KNIFE FROM INSIDE THE SHOP.

I BELIEVE I GOT IT OFF THE COUNTER. IT WAS A NICE KNIFE. I TOLD YOU ALL BEFORE THAT I HAD TAKEN A SET OF KEYS, BUT IT WAS A KNIFE, I REMEMBER NOW THAT IT WAS A KNIFE. ROB AND I WERE ALREADY BACK IN THE CAR. WHEN MAURICE GOT THERE, I ASKED MAURICE WHERE FORREST WAS HE SAID THAT HE MUST OF TOOK OFF. TEXAS RANGER SAL ABREO ASKED ME HOW LONG WHERE WE IN THE SHOP. I THINK WE WERE IN THERE ABOUT 20 TO 25 MINUTES, I AM NOT SURE. WE WERE IN THE CAR AND ON THE WAY OUT WE SAW FORREST, HE WAS IN THE PARKING LOT SOMEWHERE AND WE PICKED HIM UP.

I REMEMBER DRIVING, BUT I DON'T REMEMBER WHAT DIRECTION WE WENT. WE STOPPED AT SOME BRIDGE. IT WAS ABOUT 10 TO 15 MINUTES AWAY FROM THE SHOP. I GOT OUT AND THREW UP OVER THE RAILING OF THE BRIDGE. I TOOK THE KNIFE AND THREW IT OVER THE RAIL ALSO. I MADE SURE IT WAS GONE. I REMEMBER TREES AND I DON'T REMEMBER SEEING ANY WATER. I GOT BACK INTO THE CAR. I DONT KNOW WHAT HAPPENED NEXT, I REMEMBER BEING BACK AT THE APARTMENT. DETECTIVE FUENTES ASKED ME TO DESCRIBE THE TWO GUNS. THE GUN THAT MAURICE HAD WAS A BLACK 22 CALIBER REVOLVER, SMALL, I THINK IT HAD WOOD GRIPS. THE GUN THAT ROB HAD WAS A SMALL SEMI AUTOMATIC PISTOL, IT HAD A CLIP, I THINK IT WAS A 38, SOME OF THE WRITING ON THE GUN WAS SCRATCHED OFF. ROB AND I SPLIT UP FROM MAURICE AND FORREST. ROB AND I SPENT SOME TIME AT THE APARTMENT. I REMEMBER ON THE WEEKEND THAT I GOT INTO A YELLOW OR GOLD JEEP TO SEE MARY. MARY IS A GIRL THAT I MET AT MUSIC CAMP WHO LIVES IN HELOTES, WHICH IS NEAR SAN ANTONIO. MAURICE WAS

DRIVING AND I THINK FORREST WAS WITH US. ROB AND I RODEWITH THEM TO SAN ANTONIO. WE STAYED THERE MAYBE AN HOUR. I GOT A HOLD OF A NEWSPAPER AND I REMEMBER READING ABOUT THE FIRE AND THE YOGURT SHOP MURDERS. I READ IT OUT LOUD TO EVERYBODY. WE DROVE BACK TO AUSTIN. I REMEMBER GETTING BACK HOME AND WANTING TO DO NOTHING MORE THAN SLEEP. SEVERAL DAYS AFTER WE GOT BACK FROM SAN ANTONIO, ROB CAME INTO THE ROOM WE SLEEP IN AND TOLD ME THAT MAURICE GOT POPPED WITH THE GUN THAT THEY USED AT THE YOGURT SHOP. THE SEMI AUTOMATIC WAS LAYING ON THE BED.

I KNEW THAT I HAD TO GET RID OF IT. I PICKED IT UP AND LEFT THE APARTMENT. I REMEMBER WALKING PAST A DUMPSTER AND THINKING THAT I SHOULD JUST THROW IT IN THE DUMPSTER. I WALKED INTO THE CREEK IN THE APARTMENT COMPLEX. I PUT IT IN A HOLE IN THE SIDE OF THE WALL IN THE CREEK. I WEDGE ANOHER ROCK IN IT. I STACKED SOME ROCKS NEAR IT AS A MARKER TO REMIND ME WHERE IT PUT IT. I WENT BACK AND TOLD ROB THAT GOT RID OF IT AND THAT NO ONE WOULD EVER FIND IT. LESS THAN A MONTH LATER ROB TOOK OFF. I HAD MOVED OUT FROM DRY CREEK AND WAS STAYING AT MY PARENTS HOUSE AGAIN. WHEN I WENT BACK TO ROB'S APARTMENT TO GET SOME OF MY THINGS, ROB'S DAD TOLD ME THAT ROB WENT BACK TO WHERE EVER HE CAME FROM. I USED TO REMEMBER WHERE THAT WAS, BUT I DON'T REMEMBER NOW. A COUPLE OF MONTHS LATER I MET THIS GUY NAME PATRICK DAVIDSON THAT I MET AT DOUBLE DAVES. WE MOVED IN WITH THESE GUYS NAMED DANNY AND DANIEL. IN DECEMBER OF 1992, I WAS SMOKING A

LOT OF POT. I HAD BEEN DRINKING A LOT TOO AND STARTED HAVING FLASHBACKS. I WENT BACK OUT TO THE CREEK AND FOUND THE GUN. I TOOK THE GUN AND PUT IT IN A BROWN PAPER BACK THAT I FOUND IN THE CREEK. I TOOK THE GUN BACK TO SOUTH AUSTIN TO OUR APARTMENT. I TOLD PAT A LITTLE BIT. I DON'T REMEMBER HOW MUCH I TOLD HIM BUT I DO REMEMBER THAT I TOLD HIM THAT I WOULDN'T HAVE DONE IT IF I HAD NOT BEEN FORCED TO DO IT. I TOLD PAT THAT I NEEDED TO GET RID OF WHAT WAS IN THE SACK. I DIDN'T TELL HIM. I ASKED HIM IF HE WANTED TO KNOW AND HE SAID NO. HE TOLD ME THAT HE PUT IT OUT IN THE TRASH. YESTERDAY WHEN I TOLD HIM WHAT WAS GOING ON AND TOLD HIM THAT I WAS IN TROUBLE, HE SAID THAT HE PRETTY MUCH KNEW THAT THERE WAS A GUN IN THE SACK WHEN I GAVE IT TO HIM IN 1992.

DETECTIVE FUENTES ASKED ME WHO I HAVE TOLD ABOUT THE MURDERS. MY DAD CAME OVER TO MY HOUSE THIS PAST SUNDAY. I TOLD HIM WHAT WAS GOING ON BUT DID NOT GIVE HIM A LOT OF DETAILS. HE'S A SMART MAN HE FIGURED OUT WHAT I WAS TALKING ABOUT WHEN I TOLD HIM THAT IT HAPPENED BACK AROUND 7 YEARS AGO. I THINK HE ALWAYS SUSPECTED THAT I WAS SOMEHOW INVOLVED BACK IN 1991 BECAUSE OF WHO I WAS HANGING OUT WITH. WE HUGGED SEVERAL TIMES AND HE KINDA STARTED TO CRY. I CAN NOT TELL MY MOTHER BECAUSE THIS WOULD DESTROY HER. I TOLD MY WIFE, BUT I DID NOT GIVE HER DETAILS. SHE IS REAL UPSET WITH ME RIGHT NOW. WE TALKED ABOUT WHETHER I SHOULD GET A LAWYER RIGHT NOW AND I TOLD HER THAT THAT WAS THE LAST THINK I NEEDED RIGHT NOW. YESTERDAY, RIGHT AFTER I DROPPED

MY DAUGHTER OFF AT DAYCARE, I WENT NEXT DOOR TO USE THE PAYPHONE AND I CALLED THE ATTORNEY BETTY BLACKWELL. I TOLD HER THAT IT INVOLVED THE YOGURT SHOP MURDERS AND THAT I WAS TALKING TO THE POLICE. SHE RECOMMENDED THAT I STOP TALKING TO YOU ALL. SHE TOLD ME THAT WHO EVER THEY PIN THIS ON, THEY ARE LOOKING FOR THE DEATH PENALTY. SHE TOLD ME THAT SHE DID NOT HANDLE CASES LIKE THIS. SHE TOLD ME THAT I DIDN'T SOUND TO GOOD AND THAT I SHOULD SEEK HELP LIKE CHECKING INTO SHOAL CREEK OR SOMETHING LIKE THAT. I TOLD MY BEST FRIEND PATRICK DAVIDSON AND HE WAS PISSED OFF AT ME. WHEN HE GOT RID OF THE GUN FOR ME IN 1992 HE DIDN'T KNOW WHAT I HAD DONE WITH IT. HE SAID THAT HE PRETTY MUCH KNEW IT WAS A GUN WHEN HE THREW IT AWAY.

THE OTHER DAY WHEN I WAS BEING INTERVIEWED BY DETECTIVE LARA AND DETECTIVE MERRILL, THEY SHOWED ME DIGITAL PHOTOGRAPHS ON THEIR COMPUTER OF THE PEOPLE I HAVE BEEN TALKING ABOUT WHEN I USED THE NAMES MAURICE, ROB SPRINGSTEEN AND FORREST. I RECOGNIZED MAURICE AND ROB, BUT I HAD A HARD TIME WITH FORREST'S PHOTOGRAPH. I HAD KNOWN MAURICE FOR ABOUT 2 OR 3 MONTHS BEFORE THE MURDERS. I MET MAURICE THROUGH ROB. I HAD SEEN MAURICE ALMOST EVERY TWO OR THREE DAYS DURING THAT TIME PERIOD. I HAD KNOWN ROB SPRINGSTEEN ABOUT MAYBE SIX MONTHS AND HAD BEEN STAYING WITH HIM FOR ABOUT A COUPLE OF MONTHS. FORREST IS A GUY THAT I KNEW THROUGH MCCALLUM HIGH SCHOOL. I WOULD SEE HIM AT SCHOOL AND NORTHCROSS MALL.

I REMEMBER WHEN WE WERE IN MAURICE'S CAR LEAVING THE SHOP, MAURICE HAD THREATENED EVERYBODY IN THE CAR. I DON'T REMEMBER EXACTLY WHAT HE SAID. LATER, ROB HAD TOLD ME WHEN WE WERE AT HIS APARTMENT THAT IF I EVER SAID ANYTHING, IT WOULD ALL COME BACK TO ME. HE SAID THAT HE WOULD DENY EVERYTHING.

I CAN READ, WRITE, AND UNDERSTAND THE ENGLISH LANGUAGE AND THE ABOVE STATEMENT I HAVE READ AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

/s/ [Illegible]
Signature

/s/ [Illegible]
Witness

/s/[Illegible]
Witness